of S. 979, a bill to protect women's reproductive health and constitutional right to choice, and for other purposes.

S. 986

At the request of Mr. D'AMATO, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 986, a bill to amend the Internal Revenue Code of 1986 to provide that the Federal income tax shall not apply to United States citizens who are killed in terroristic actions directed at the United States or to parents of children who are killed in those terroristic actions.

S. 1000

At the request of Mr. BURNS, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1000, a bill to amend the Internal Revenue Code of 1986 to provide that the depreciation rules which apply for regular tax purposes shall also apply for alternative minimum tax purposes, to allow a portion of the tentative minimum tax to be offset by the minimum tax credit, and for other purposes.

SENATE RESOLUTION 146

At the request of Mr. JOHNSTON, the names of the Senator from Utah [Mr. HATCH], the Senator from Indiana [Mr. LUGAR], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Resolution 146, a resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as ''National Family Week'', and for other purposes.

SENATE RESOLUTION 149

At the request of Mr. AKAKA, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Resolution 149, a resolution expressing the sense of the Senate regarding the recent announcement by the Republic of France that it intends to conduct a series of underground nuclear test explosions despite the current international moratorium on nuclear testing.

AMENDMENT NO. 1539

At the request of Mrs. HUTCHISON the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of amendment No. 1539 proposed to S. 343, a bill to reform the regulatory process, and for other purposes.

SENATE CONCURRENT RESOLUTION 21—RELATIVE TO THE PORTRAIT MONUMENT

Mr. STEVENS (for himself, Mr. FORD, Mr. DOLE, Mr. DASCHLE, Mr. HATFIELD, Mr. PELL, Mr. HELMS, Mr. MOYNIHAN, Mrs. KASSEBAUM, Mrs. HUTCHISON, Ms. MIKULSKI, and Mr. D'AMATO) submitted the following concurrent resolution; ordered to be held at the desk:

S. CON. RES. 21

Whereas in 1995, women of America are celebrating the 75th anniversary of their right to participate in our government through suffrage;

Whereas Lucretia Mott, Elizabeth Cady Stanton, and Susan B. Anthony were pioneers in the movement for women suffrage and the pursuit of equal rights; and

Whereas, the relocation of the ''Portrait Monument'' to a place of prominence and esteem in the Capitol Rotunda would serve to honor and reserve the contribution of thousands of women: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Architect of the Capitol shall restore the ''Portrait Monument'' to its original state and place it in the Rotunda of the United States Capitol.

Mr. STEVENS. Mr. President, I want to call attention to the Senate that on August 26, Americans will celebrate the 75th anniversary of women's suffrage.

On August 26, 1920, the 19th amendment to the U.S. Constitution granting women the right to vote was ratified in the State legislatures of the country after having been sent to the States by the Congress of the United States.

Alaska was in the forefront of the suffrage movement. Few people know that during the mining days that preceded this century, in the last part of the last century and the early part of this century, women voted in the mining camps in the organization of local governments in our territory.

As a matter of fact, the first act of the first territorial legislature in Alaska was to grant women the right to vote. That 1913 resolution said that:

In all elections that are now or may hereafter be authorized by law in the Territory of Alaska or any subdivision or municipality thereof, the elective franchise is hereby extended to such women as have the qualifications of citizens required of male electors.

It just so happens that E.B. Collins, who was my first senior partner when I went to Alaska and practiced in Fairbanks, was the speaker of the first house of representatives in that territorial legislature. He said to me that he felt like giving women the right to vote was one of his greatest victories in the days of the Territory of Alaska. I am sure he would be pleased to know today, that his position as speaker of the State of Alaska is held by an Alaskan woman, Gail Phillips of Homer, AK, and the president of our Alaska State Senate is Drue Pearce, another successful Alaska woman.

Unfortunately, history has not fully recognized the role that these courageous suffragists have played in our history. While a statue was commissioned to honor those women involved in the process, it has been relegated to the basement of the Capitol and faces a back wall. At one time, the inscription was actually painted over with whitewash.

In our Rotunda, most of the statues honor Presidents, and as we know, all to date have been men. Someday I hope the Rotunda will be graced with a statue of the first female President. Until then, it is my hope to honor the role women have played by moving the women's suffrage statue up to the place of honor it should have in the Rotunda. So today I am sending to the desk a resolution directing the Architect of the Capitol to move the women's statue from the basement into the Rotunda before August 26.

Mr. President, this concurrent resolution is cosponsored by Senators DOLE, FORD, HATFIELD, PELL, HELMS, MOYNIHAN, KASSEBAUM, HUTCHISON, and MIKULSKI.

I ask unanimous consent that it be held at the desk until the close of business Monday so all Senators who may wish to do so may cosponsor it, and then having cleared this with the minority and majority, I ask that it be held on the calendar until such time as the leadership will bring it to a vote, which I hope will be very soon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I thank this young lady, Sherry Little, who works on the Rules Committee staff, who brought this statue to my attention.

I thank the Senator from Michigan for his courtesy.

AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

HARKIN AMENDMENT NO. 1541

(Ordered to lie on the table.)

Mr. HARKIN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . DIRECTIVE TO THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY CONCERNING REGULATION OF FISHING LURES.

(a) FINDINGS.—Congress finds that—

(1) millions of Americans of all ages enjoy recreational fishing; fishing is one of the most popular sports;

(2) lead and other types of metal sinkers and fishing lures have been used by Americans for fishing for hundreds of years;

(3) the Administrator of the Environmental Protection Agency has proposed to issue a rule under section 6 of the Toxic Substances Control Act, to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass;

(4) the Environmental Protection Agency has based its conclusions that lead fishing sinkers of a certain size present an unreasonable risk of injury to human health or the environment on less than definitive scientific data, conjecture, and anecdotal information;

(5) alternative forms of sinkers and fishing lures are considerably more expensive than those made of lead; consequently, a ban on lead sinkers would impose additional costs on millions of Americans who fish;

(6) in the absence of more definitive evidence of harm to the environment, the Federal Government should not take steps to restrict the use of lead sinkers; and

(7) alternative measures to protect waterfowl from lead exposure should be carefully reviewed.

(b) FISHING SINKERS AND LURES.—

(1) DIRECTIVE.—The Administrator of the Environmental Protection Agency shall not, under purported authority of section 6 of the Toxic Substances Control Act (15 U.S.C. 2605), take action to prohibit or otherwise restrict the manufacturing, processing, distributing, or use of any fishing sinkers or lures containing lead, zinc, or brass.

(2) FURTHER ACTION.—If the Administrator obtains a substantially greater amount of evidence of risk of injury to health or the environment than the evidence that was adduced in the rulemaking proceedings described in the proposed rule dated February 28, 1994 (59 Fed. Reg. 11122 (March 9, 1994)), the Administrator shall report those findings to Congress, with any recommendation that the Administrator may have for further action.

HARKIN (AND LUGAR) AMENDMENT NO. 1542

(Ordered to lie on the table.)

Mr. HARKIN (for himself and Mr. LUGAR) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, between lines 20 and 21, insert the following:

SEC. . EDIBLE OIL REGULATORY REFORM.

(a) DEFINITIONS.—In this section:

(1) ANIMAL FAT.—The term ''animal fat'' means each type of animal fat, oil, or grease (including fat, oil, or grease from fish or a marine mammal), including any fat, oil, or grease referred to in section 61(a)(2) of title 13, United States Code.

(2) VEGETABLE OIL.—The term ''vegetable oil'' means each type of vegetable oil (including vegetable oil from a seed, nut, or kernel), including any vegetable oil referred to in section 61(a)(1) of title 13, United States Code.

(b) DIFFERENTIATION AMONG FATS, OILS, AND GREASES.—

(1) IN GENERAL.—In issuing or enforcing a regulation, an interpretation, or a guideline relating to a fat, oil, or grease under a Federal law, the head of a Federal agency shall—

(A) differentiate between and establish separate categories for—

(i)(I) animal fats; and

(II) vegetable oils; and

(ii) other oils, including petroleum oil; and

(B) apply different standards to different classes of fat and oil as provided in paragraph (2).

(2) CONSIDERATIONS.—In differentiating between the classes of animal fats and vegetable oils referred to in paragraph (1)(A)(i) and the classes of oils described in paragraph (1)(A)(ii), the head of the Federal agency shall consider differences in physical, chemical, biological, and other properties, and in the effects on human health and the environment, of the classes.

(c) FINANCIAL RESPONSIBILITY.—

(1) LIMITS ON LIABILITY.—Section 1004(a)(1) of the Oil Pollution Act of 1990 (33 U.S.C. 2704(a)(1)) is amended by striking ''for a tank vessel,'' and inserting ''for a tank vessel carrying oil in bulk as cargo or cargo residue (except a tank vessel on which the only oil carried is an animal fat or vegetable oil, as those terms are defined in section 2 of the Edible Oil Regulatory Reform Act),''.

(2) FINANCIAL RESPONSIBILITY.—The first sentence of section 1016(a) of the Act (33 U.S.C. 2716(a)) is amended by striking '', in the case of a tank vessel, the responsible party could be subject under section 1004(a)(1) or (d) of this Act, or to which, in the case of any other vessel, the responsible party could be subjected under section 1004(a)(2) or (d)'' and inserting ''the responsible party could be subjected under section 1004(a) or (d) of this Act''.

KENNEDY AMENDMENT NO. 1543

Mr. KENNEDY proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra, as follows:

On page 46, insert between lines 4 and 5 the following:

''§ 629A. Inapplicability to occupational safety and health and mine safety and health regulations

''This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

''(1) occupational safety and health; or

''(2) mine safety and health.

On page 50, insert between lines 15 and 16 the following new paragraph:

''(4) This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

''(A) occupational safety and health; or

''(B) mine safety and health.

On page 96, insert between lines 20 and 21 the following new sections:

SEC. ___. OCCUPATIONAL SAFETY AND HEALTH REGULATIONS.

(a) PRIORITY FOR ESTABLISHING STANDARDS.—Section 6(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(g)) is amended—

(1) by striking ''(g) In'' and inserting ''(g)(1) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995, in''; and

(2) by adding at the end the following new paragraph:

''(2) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995, in determining the priority for establishing standards relating to toxic materials or harmful physical agents, the Secretary shall consider the number of workers exposed to such materials or agents, the nature and severity of potential impairment, and the likelihood of such impairment.''.

(b) RISK ASSESSMENTS FOR FINAL STANDARD.—Section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) is amended by adding at the end the following new subsection:

''(h)(1) In promulgating any final occupational safety and health regulation or standard, the Secretary shall publish in the Federal Register—

''(A) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

''(B) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

''(C) a certification that—

''(i) the estimate under subparagraph (A) and the analysis under subparagraph (B) are—

''(I) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

''(II) supported by the best available scientific data;

''(ii) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

''(iii) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

''(2) If the Secretary cannot make the certification required under paragraph (1)(C), the Secretary shall—

''(A) notify the Congress concerning the reasons why such certification cannot be made; and

''(B) publish a statement of such reasons with the final regulation or standard.

''(3) Nothing in this subsection shall be construed to grant a cause of action to any person.''.

SEC. . MINE SAFETY AND HEALTH REGULATIONS.

The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) is amended by inserting after section 101 the following new section:

''RISK ASSESSMENTS FOR FINAL STANDARDS

''SEC. 101a. (a) In promulgating any final mine safety and health regulation or standard, the Secretary shall publish in the Federal Register—

''(1) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

''(2) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

''(3) a certification that—

''(A) the estimate under paragraph (1) and the analysis under paragraph (2) are—

''(i) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

''(ii) supported by the best available scientific data;

''(B) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

''(C) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

''(b) If the Secretary cannot make the certification required under subsection (a)(3), the Secretary shall—

''(1) notify the Congress concerning the reasons why such certification cannot be made; and

''(2) publish a statement of such reasons with the final regulation or standard.

''(c) Nothing in this section shall be construed to grant a cause of action to any person.''.

CAMPBELL AMENDMENT NO. 1544

(Ordered to lie on the table.)

Mr. CAMPBELL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 19, line 5, strike ''or''.

On page 19, line 7, strike the period and insert ''; or''.

On page 19, between lines 7 and 8, insert the following:

''(xiii) a rule that approves, in whole or in part, a plan or program that provides for the implementation, maintenance, or enforcement of Federal standards or requirements adopted by an individual State.

FEINGOLD (AND OTHERS) AMENDMENT NO. 1545

(Ordered to lie on the table.)

Mr. FEINGOLD (for himself, Mr. MCCAIN, Mrs, FEINSTEIN, Mr. JEFFORDS, Mr. WELLSTONE, Mr. BRADLEY, Mr SIMON, Mr. BIDEN, Mr. LEAHY, Mr. AKAKA, and Mr. GRAHAM) submitted an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . CAMPAIGN FINANCE REFORM.

(a) FINDINGS.—The Congress finds that—

(1) the current system of campaign finance has led to public perceptions that political contributions and their solicitation have unduly influenced the official conduct of elected officials;

(2) the failure to limit campaign expenditures in any way has caused individuals elected to the United States Senate to spend an increasing portion of their time in office raising campaign funds, interfering with the ability of the Senate to carry out its constitutional responsibilities;

(3) the public faith and trust in Congress as an institution has eroded to dangerously low levels and public support for comprehensive congressional reforms in overwhelming; and

(4) reforming our election laws should be a high legislative priority of the 104th Congress.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that as soon as possible before the conclusion of the 104th Congress, the United States Senate should consider comprehensive campaign finance reform legislation that will increase the competitiveness and fairness of elections to the United States Senate.

DORGAN AMENDMENT NO. 1546

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 16, strike out lines 12 through 14.

SIMON (AND WELLSTONE) AMENDMENT NO. 1547

Mr. SIMON (for himself and Mr. WELLSTONE) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 25, between lines 22 and 23, insert the following:

''(g) EXEMPTION FOR THE PROTECTION OF CHILDREN.—None of the provisions of this subchapter shall apply to agency rules or actions intended to protect children against poisoning, including a rule—

''(1) relating to iron toxicity poisoning;

''(2) relating to lead poisoning from food products; or

''(3) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

On page 49, line 21, strike ''or''.

On page 50, line 2, strike the period at the end and insert ''; or''.

On page 50, between lines 2 and 3, insert the following:

''(F) a rule or agency action a purpose of which is to protect children from poisoning, including a rule—

''(i) relating to iron toxicity poisoning;

''(ii) relating to lead poisoning from food products; or

''(iii) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

THOMAS AMENDMENT NO. 1548

Mr. HATCH (for Mr. THOMAS) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place, insert the following:

SEC. . RENEWAL OF PERMITS FOR GRAZING ON NATIONAL FOREST LANDS.

Notwithstanding any other law, at the request of an applicant for renewal of a permit that has expired before, on, or after the date of enactment of this Act for grazing on land located in a unit of the National Forest System for which a land and resource management plan under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) is in effect, if all action required under the National Environmental Policy Act of 1969 with respect to the land and resource management plan has been taken, the Secretary of Agriculture shall reinstate, if necessary, and extend the term of the permit until the date on which the Secretary of Agriculture completes action on the application, including action required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) This section shall apply only to permits that were not renewed solely because the action required under the National Environmental Policy Act had not been completed.

SNOWE (AND OTHERS) AMENDMENT NO. 1549

Mr. HATCH (for Ms. SNOWE for herself, Mr. KEMPTHORNE, Mr. COHEN, Mr. LEAHY, and Mr. LIEBERMAN) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the substitute amendment insert the following new section:

SEC. . BOTTLED WATER STANDARDS.

Section 410 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 349) is amended—

(1) by striking ''Whenever'' and inserting ''(a) Except as provided in subsection (b), whenever''; and

(2) by adding at the end thereof the following new subsection:

''(b)(1)(A) Not later than 180 days after the Administrator of the Environmental Protection Agency promulgates a national primary drinking water regulation for a contaminant under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1), the Secretary, after public notice and comment, shall issue a regulation under this subsection for the contaminant in bottled water or make a finding that the regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems (as defined under section 1401(4) of such Act (42 U.S.C. 300f(4))) but not in water used for bottled drinking water.

''(B) In the case of contaminants for which national primary drinking water regulations were promulgated under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1) before the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Secretary shall issue the regulation or publish the finding not later than 1 year after such date of enactment.

''(2) The regulation shall include any monitoring requirements that the Secretary determines appropriate for bottled water.

''(3) The regulation shall require the following:

''(A) In the case of contaminants for which a maximum contaminant level is established in a national primary drinking water regulation under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1), the regulation under this subsection shall establish a maximum contaminant level for the contaminant in bottled water that is at least as stringent as the maximum contaminant level provided in the national primary drinking water regulation.

''(B) In the case of contaminants for which a treatment technique is established in a national primary drinking water regulation under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1), the regulation under this subsection shall require that bottled water be subject to requirements no less protective of the public health than those applicable to water provided by public water systems using the treatment technique required by the national primary drinking water regulation.

''(4)(A) If the Secretary fails to establish a regulation within the 180-day period described in paragraph (1)(A) or the 1-year period described in paragraph (1)(B) (whichever is applicable), the national primary drinking water regulation described in subparagraph (A) or (B) of such paragraph (whichever is applicable) shall be considered, as of the date on which the Secretary is required to establish a regulation under such paragraph, as the regulation applicable under this subsection to bottled water.

''(B) Not later than 30 days after the end of the 180-day period, or the 1-year period (whichever is applicable), described in subparagraph (A) or (B) of paragraph (1), the Secretary shall, with respect to a national primary drinking water regulation that is considered applicable to bottled water as provided in subparagraph (A), publish a notice in the Federal Register that—

''(i) sets forth the requirements of the national primary drinking water regulation, including monitoring requirements, which shall be applicable to bottled water; and

''(ii) provides that—

''(I) in the case of a national primary drinking water regulation promulgated after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the requirements shall take effect on the date on which the national primary drinking water regulation for the contaminant takes effect under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1); or

''(II) in the case of a national primary drinking water regulation promulgated before the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the requirements shall take effect on the date that is 18 months after such date of the enactment.''.

BROWN AMENDMENT NO. 1550

Mr. BROWN proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the Dole substitute, No. 1487, insert the following:

SEC. . EXECUTIVE PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

''§ 560. Preemption of State law

''(a) No agency shall construe any authorization in a statute for the issuance of regulations as authorizing preemption of State law by rulemaking or other agency action, unless—

''(1) the statute expressly authorizes issuance of preemptive regulations;

''(2) there is clear and convincing evidence that the Congress intended to delegate to the agency the authority to issue regulations preempting State law; or

''(3) the agency concludes that the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

''(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated.

''(c) When an agency proposes to act through rulemaking or other agency action to preempt State law, the agency shall provide all affected States actual notice and an opportunity for appropriate participation in the proceedings under sections 553 and 554.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

''560. Preemption of State law.''.

(c) APPLICATION.—The amendments made by this section shall apply to rulemaking initiated on or after the date of enactment of this section.

SHELBY (AND OTHERS) AMENDMENTS NOS. 1551–1552

(Ordered to lie on the table.)

Mr. SHELBY (for himself, Mr. FRIST, Mrs. HUTCHISON, Mr. LOTT, Mr. HELMS, Mr. COCHRAN, and Mr. GRAMS) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1551

At the appropriate place in the Dole substitute amendment 1487 add the following new section:

SEC. . SMALL BUSINESS REGULATORY BILL OF RIGHTS.

(a) SHORT TITLE.—This section may be cited as the ''Small Business Regulatory Bill of Rights Act''.

(b) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

''SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

''§ 597. Definition

''For purposes of this subchapter, the term 'small business' has the same meaning given such term in section 601(3).

''§ 597a. Rights of small businesses prior to enforcement act

''Except as provided in section 597c, each agency shall ensure that its regulatory enforcement program includes—

''(1) a no-fault compliance audit program in which no penalties may be assessed against a small business upon voluntary application by the business to the agency or a licensed private sector business for a compliance audit;

''(2) a publicized, coherent compliance assistance program available to regulated small businesses under the agency's jurisdiction that provides technical and other compliance related assistance to small businesses upon request of a small business;

''(3) a method to enforce regulations in a uniform, consistent, and nonarbitrary manner nationwide; and

''(4) an abatement period of not less than 60 days to allow the small business to correct any violations before a penalty is assessed.

''§ 597b. Rights after investigative or enforcement action

''Except as provided in section 597c, each small business that has been found in violation of a regulation and was subject to an enforcement action or penalty shall have the right—

''(1) to be free from inspections for 180 days after the date on which the small business obtains certification from the agency that the small business is in compliance with the regulation;

''(2) to have ability to pay factored into the assessment of penalties through flexible payment plans with reduced installments that reflect the business's long-term ability to pay (taking into account cashflow and long-term profitability); and

''(3) to not have fines paid be used to finance the inspecting agency, but instead credited to the General Treasury of the United States, to be used for reduction of the Federal deficit.

''§ 597c. Exceptions and limitation

''(a) A provision of this subchapter shall not apply if compliance with such provision of this subchapter would—

''(1) substantially delay responding to an imminent danger to person or property;

''(2) substantially or unreasonably impede a criminal investigation; or

''(3) enable any small business to knowingly disregard applicable regulations, except a request for a non-fault compliance audit shall not constitute prima facie evidence of knowingly disregarding applicable regulations.

''(b) A small business shall not be entitled to the benefit of a no-fault compliance audit program under section 597a(1) regarding a particular enforcement issue for 60 days after the business has had an agency-initiated contact regarding such issue.

''(c) This subchapter shall not apply to any rule or regulation described under section 621(9)(B)(i).''.

(c) TECHNICAL AMENDMENT.—The analysis for chapter 5 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

''Sec.
''597. Definition.
''597a. Rights of small businesses prior to enforcement action.
''597b. Rights after investigative or enforcement action.
''597c. Exceptions and limitation.''.

(d) REPORTS TO CONGRESS.—The Director of the Office of Management and Budget shall submit an annual report to Congress on the progress of the agencies in complying with this Act and the amendments made by this Act.

AMENDMENT NO. 1552

At the appropriate place in the Dole Substitute 1487 add the following new section:

SEC. . SMALL BUSINESS REGULATORY BILL OF RIGHTS.

(a) SHORT TITLE.—This section may be cited as the ''Small Business Regulatory Bill of Rights Act''.

(b) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

''SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

''§ 597. Definition

''For purposes of this subchapter, the term 'small business' has the same meaning given such term in section 601(3).

''§ 597a. Rights of small businesses prior to enforcement action

''(a) Except as provided in section 597c, each agency shall ensure that its regulatory enforcement program includes—

''(1) implementation of a no-fault compliance audit program;

''(2) a publicized, coherent compliance assistance program available to regulated small businesses under the agency's jurisdiction that provides technical and other compliance related assistance to small businesses upon request of a small business;

''(3) a method to enforce regulations in a uniform, consistent, and nonarbitrary manner nationwide;

''(4) an abatement period of not less than 60 days to allow the small business to correct any violations before a penalty is assessed; and

''(5) a grace period of not less than 180 days to allow the small business to correct any violation discovered through participation in the programs created under paragraph (1) or (2).

''(b) No penalties or enforcement actions will be assessed or taken if such violations are corrected during the grace period described under subsection (a)(5), so long as the business has not engaged in a pattern of intentional misconduct.

''§ 597b. Rights after investigative or enforcement action

''Except as provided in section 597c, each small business that has been found in violation of a regulation and was subject to an enforcement action or penalty shall have the right—

''(1) to be free from inspections for 180 days after the date on which the small business obtains certification from the agency that the small business is in compliance with the regulation;

''(2) to have ability to pay factored into the assessment of penalties through flexible payment plans with reduced installments that reflect the business's long-term ability to pay (taking into account cash-flow and long-term profitability); and

''(3) to not have fines paid be used to finance the inspecting agency, but instead credited to the General Treasury of the United States, to be used for reduction of the Federal deficit.

''§ 597c. Exceptions and limitation

''(a) A provision of this subchapter shall not apply if compliance with such provision of this subchapter would—

''(1) substantially delay responding to an imminent danger to person or property;

''(2) substantially or unreasonably impede a criminal investigation; or

''(3) enable any small business to knowingly disregard applicable regulations, except a request for a no-fault compliance audit shall not constitute prima facie evidence of knowingly disregarding applicable regulations.

''(b) A small business shall not be entitled to the benefit of a no-fault compliance audit program under section 597a(1) regarding a particular enforcement issue for 60 days after the business has had an agency-initiated contact regarding such issue.

''(c) This subchapter shall not apply to any rule or regulation described under section 621(9)(B)(i).''.

(c) TECHNICAL AMENDMENT.—The analysis for chapter 5 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

''Sec.
''597. Definition.
''597a. Rights of small businesses prior to enforcement action.

''597b. Rights after investigative or enforcement action.
''597c. Exceptions and limitation.''.

(d) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—

(1) COORDINATION.—The Director of the Office of Management and Budget shall coordinate the implementation of this section and establish a schedule for bringing all affected agencies into full compliance by the effective date of this section. Agencies may be brought into partial compliance before such date.

(2) REPORT.—The Director of the Office of Management and Budget shall submit an annual report to Congress on the progress of the agencies in complying with this section and the amendments made by this section.

(e) EFFECTIVE DATE.—This section shall take effect on the earlier of the date designated by the President or January 1, 1998.

HEFLIN AMENDMENT NO. 1553

(Ordered to lie on the table.)

Mr. HEFLIN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 76, insert immediately before line 10 the following:

(c) COURT OF FEDERAL CLAIMS.—Section 1491(a) of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(4) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.''.

HATCH AMENDMENTS NOS. 1554–1555

(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1554

In lieu of the language to be proposed, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Comprehensive Regulatory Reform Act of 1995''.

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''this subchapter'' and inserting ''this chapter and chapters 7 and 8'';

(2) in paragraph (13), by striking ''and'';

(3) in paragraph (14), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following new paragraph:

''(15) 'Director' means the Director of the Office of Management and Budget.''.

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended to read as follows:

''§ 553. Rulemaking

''(a) APPLICABILITY.—This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

''(1) a matter pertaining to a military or foreign affairs function of the United States;

''(2) a matter relating to the management or personnel practices of an agency;

''(3) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency; or

''(4) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

''(b) NOTICE OF PROPOSED RULEMAKING.—General notice of proposed rulemaking shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice of the proposed rulemaking in accordance with law. Each notice of proposed rulemaking shall include—

''(1) a statement of the time, place, and nature of public rulemaking proceedings;

''(2) a succinct explanation of the need for and specific objectives of the proposed rule, including an explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(5);

''(3) a succinct explanation of the specific statutory basis for the proposed rule, including an explanation of—

''(A) whether the interpretation is clearly required by the text of the statute; or

''(B) if the interpretation is not clearly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

''(4) the terms or substance of the proposed rule;

''(5) a summary of any initial analysis of the proposed rule required to be prepared or issued pursuant to chapter 6;

''(6) a statement that the agency seeks proposals from the public and from State and local governments for alternative methods to accomplish the objectives of the rulemaking that are more effective or less burdensome than the approach used in the proposed rule; and

''(7) a statement specifying where the file of the rulemaking proceeding maintained pursuant to subsection (j) may be inspected and how copies of the items in the file may be obtained.

''(c) PERIOD FOR COMMENT.—The agency shall give interested persons not less than 60 days after providing the notice required by subsection (b) to participate in the rulemaking through the submission of written data, views, or arguments.

''(d) GOOD CAUSE EXCEPTION.—Unless notice or hearing is required by statute, a final rule may be adopted and may become effective without prior compliance with subsections (b) and (c) and (e) through (g) if the agency for good cause finds that providing notice and public procedure thereon before the rule becomes effective is impracticable, unnecessary, or contrary to the public interest. If a rule is adopted under this subsection, the agency shall publish the rule in the Federal Register with the finding and a succinct explanation of the reasons therefor.

''(e) PROCEDURAL FLEXIBILITY.—To collect relevant information, and to identify and elicit full and representative public comment on the significant issues of a particular rulemaking, the agency may use such other procedures as the agency determines are appropriate, including—

''(1) the publication of an advance notice of proposed rulemaking;

''(2) the provision of notice, in forms which are more direct than notice published in the Federal Register, to persons who would be substantially affected by the proposed rule but who are unlikely to receive notice of the proposed rulemaking through the Federal Register;

''(3) the provision of opportunities for oral presentation of data, views, information, or rebuttal arguments at informal public hearings, meetings, and round table discussions, which may be held in the District of Columbia and other locations;

''(4) the establishment of reasonable procedures to regulate the course of informal public hearings, meetings and round table discussions, including the designation of representatives to make oral presentations or engage in direct or cross-examination on behalf of several parties with a common interest in a rulemaking, and the provision of transcripts, summaries, or other records of all such public hearings and summaries of meetings and round table discussions;

''(5) the provision of summaries, explanatory materials, or other technical information in response to public inquiries concerning the issues involved in the rulemaking; and

''(6) the adoption or modification of agency procedural rules to reduce the cost or complexity of the procedural rules.

''(f) PLANNED FINAL RULE.—If the provisions of a final rule that an agency plans to adopt are so different from the provisions of the original notice of proposed rulemaking that the original notice did not fairly apprise the public of the issues ultimately to be resolved in the rulemaking or of the substance of the rule, the agency shall publish in the Federal Register a notice of the final rule the agency plans to adopt, together with the information relevant to such rule that is required by the applicable provisions of this section and that has not previously been published in the Federal Register. The agency shall allow a reasonable period for comment on such planned final rule prior to its adoption.

''(g) STATEMENT OF BASIS AND PURPOSE.—An agency shall publish each final rule it adopts in the Federal Register, together with a concise statement of the basis and purpose of the rule and a statement of when the rule may become effective. The statement of basis and purpose shall include—

''(1) an explanation of the need for, objectives of, and specific statutory authority for, the rule;

''(2) a discussion of, and response to, any significant factual or legal issues presented by the rule, or raised by the comments on the proposed rule, including a description of the reasonable alternatives to the rule proposed by the agency and by interested persons, and the reasons why such alternatives were rejected;

''(3) a succinct explanation of whether the specific statutory basis for the rule is expressly required by the text of the statute, or if the specific statutory interpretation upon which the rule is based is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and why the agency has rejected other interpretations proposed in comments to the agency;

''(4) an explanation of how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file; and

''(5) a summary of any final analysis of the rule required to be prepared or issued pursuant to chapter 6.

''(h) NONAPPLICABILITY.—In the case of a rule that is required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 shall apply in lieu of subsections (c), (e), (f), and (g).

''(i) EFFECTIVE DATE.—An agency shall publish the final rule in the Federal Register

not later than 60 days before the effective date of such rule. An agency may make a rule effective in less than 60 days after publication in the Federal Register if the rule grants or recognizes an exemption, relieves a restriction, or if the agency for good cause finds that such a delay in the effective date would be contrary to the public interest and publishes such finding and an explanation of the reasons therefor, with the final rule.

''(j) RULEMAKING FILE.—(1) The agency shall maintain a file for each rulemaking proceeding conducted pursuant to this section and shall maintain a current index to such file.

''(2) Except as provided in subsection (k), the file shall be made available to the public not later than the date on which the agency makes an initial publication concerning the rule.

''(3) The rulemaking file shall include—

''(A) the notice of proposed rulemaking, any supplement to, or modification or revision of, such notice, and any advance notice of proposed rulemaking;

''(B) copies of all written comments received on the proposed rule;

''(C) a transcript, summary, or other record of any public hearing conducted on the rulemaking;

''(D) copies, or an identification of the place at which copies may be obtained, of factual and methodological material that pertains directly to the rulemaking and that was considered by the agency in connection with the rulemaking, or that was submitted to or prepared by or for the agency in connection with the rulemaking; and

''(E) any statement, description, analysis, or other material that the agency is required to prepare or issue in connection with the rulemaking, including any analysis prepared or issued pursuant to chapter 6.

The agency shall place each of the foregoing materials in the file as soon as practicable after each such material becomes available to the agency.

''(k) CONFIDENTIAL TREATMENT.—The file required by subsection (j) need not include any material described in section 552(b) if the agency includes in the file a statement that notes the existence of such material and the basis upon which the material is exempt from public disclosure under such section. The agency may not substantially rely on any such material in formulating a rule unless it makes the substance of such material available for adequate comment by interested persons. The agency may use summaries, aggregations of data, or other appropriate mechanisms to protect the confidentiality of such material to the maximum extent possible.

''(*l*) RULEMAKING PETITION.—(1) Each agency shall give an interested person the right to petition—

''(A) for the issuance, amendment, or repeal of a rule;

''(B) for the amendment or repeal of an interpretive rule or general statement of policy or guidance; and

''(C) for an interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance.

''(2) The agency shall grant or deny a petition made pursuant to paragraph (1), and give written notice of its determination to the petitioner, with reasonable promptness, but in no event later than 18 months after the petition was received by the agency.

''(3) The written notice of the agency's determination shall include an explanation of the determination and a response to each significant factual and legal claim that forms the basis of the petition.

''(m) JUDICIAL REVIEW.—(1) The decision of an agency to use or not to use procedures in a rulemaking under subsection (e) shall not be subject to judicial review.

''(2) The rulemaking file required under subsection (j) shall constitute the rulemaking record for purposes of judicial review.

''(3) No court shall hold unlawful or set aside an agency rule based on a violation of subsection (j), unless the court finds that such violation has precluded fair public consideration of a material issue of the rulemaking taken as a whole.

''(4)(A) Judicial review of compliance or noncompliance with subsection (j) shall be limited to review of action or inaction on the part of an agency.

''(B) A decision by an agency to deny a petition under subsection (*l*) shall be subject to judicial review immediately upon denial, as final agency action under the statute granting the agency authority to carry out its action.

''(n) CONSTRUCTION.—(1) Notwithstanding any other provision of law, this section shall apply to and supplement the procedures governing informal rulemaking under statutes that are not generally subject to this section.

''(2) Nothing in this section authorizes the use of appropriated funds available to any agency to pay the attorney's fees or other expenses of persons intervening in agency proceedings.''.

SEC. 4. ANALYSIS OF AGENCY RULES.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''§ 621. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'benefit' means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects, that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(3) the term 'cost' means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(4) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

''(5) the term 'major rule' means—

''(A) a rule or set of closely related rules that the agency proposing the rule, the Director, or a designee of the President determines is likely to have a gross annual effect on the economy of $50,000,000 or more in reasonably quantifiable increased costs; or

''(B) a rule that is otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President (and a designation or failure to designate under this clause shall not be subject to judicial review);

''(6) the term 'market-based mechanism' means a regulatory program that—

''(A) imposes legal accountability for the achievement of an explicit regulatory objective on each regulated person;

''(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, which flexibility shall, where feasible and appropriate, include, but not be limited to, the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

''(C) permits regulated persons to respond to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates;

''(7) the term 'performance-based standards' means requirements, expressed in terms of outcomes or goals rather than mandatory means of achieving outcomes or goals, that permit the regulated entity discretion to determine how best to meet specific requirements in particular circumstances;

''(8) the term 'reasonable alternatives' means the range of reasonable regulatory options that the agency has authority to consider under the statute granting rulemaking authority, including flexible regulatory options of the type described in section 622(c)(2)(C)(iii), unless precluded by the statute granting the rulemaking authority; and

''(9) the term 'rule' has the same meaning as in section 551(4), and—

''(A) includes any statement of general applicability that substantially alters or creates rights or obligations of persons outside the agency; and

''(B) does not include—

''(i) a rule that involves the internal revenue laws of the United States, or the assessment and collection of taxes, duties, or other revenues or receipts;

''(ii) a rule or agency action that implements an international trade agreement to which the United States is a party;

''(iii) a rule or agency action that authorizes the introduction into commerce, or recognizes the marketable status, of a product;

''(iv) a rule exempt from notice and public procedure under section 553(a);

''(v) a rule or agency action relating to the public debt;

''(vi) a rule required to be promulgated at least annually pursuant to statute, or that provides relief, in whole or in part, from a statutory prohibition, other than a rule promulgated pursuant to subtitle C of title II of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.);

''(vii) a rule of particular applicability that approves or prescribes the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

''(viii) a rule relating to monetary policy or to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k))), credit unions, Federal Home Loan Banks, government sponsored housing enterprises, farm credit institutions, foreign banks that operate in the United States and their affiliates, branches, agencies, commercial lending companies, or representative offices, (as those terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101));

''(ix) a rule relating to the payment system or the protection of deposit insurance funds or the farm credit insurance fund;

''(x) any order issued in a rate or certificate proceeding by the Federal Energy Regulatory Commission, or a rule of general applicability that the Federal Energy Regulatory Commission certifies would increase

reliance on competitive market forces or reduce regulatory burdens;

''(xi) a rule or order relating to the financial responsibility of brokers and dealers or futures commission merchants, the safeguarding of investor securities and funds or commodity future or options customer securities and funds, the clearance and settlement of securities, futures, or options transactions, or the suspension of trading under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or emergency action taken under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or a rule relating to the protection of the Securities Investor Protection Corporation, that is promulgated under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); or

''(xii) a rule that involves the international trade laws of the United States.

''§ 622. Rulemaking cost-benefit analysis

''(a) DETERMINATIONS FOR MAJOR RULE.—Prior to publishing a notice of proposed rulemaking for any rule (or, in the case of a notice of proposed rulemaking that has been published but not issued as a final rule on or before the date of enactment of this subchapter, not later than 30 days after such date of enactment), each agency shall determine—

''(1) whether the rule is or is not a major rule within the meaning of section 621(5)(A)(i) and, if it is not, whether it should be designated as a major rule under section 621(5)(B); and

''(2) if the agency determines that the rule is a major rule, or otherwise designates it as a major rule, whether the rule requires or does not require the preparation of a risk assessment under section 632(a).

''(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A) and has not designated the rule as a major rule within the meaning of section 621(5)(B), the Director or a designee of the President may, as appropriate, determine that the rule is a major rule or designate the rule as a major rule not later than 30 days after the publication of the notice of proposed rulemaking for the rule (or, in the case of a notice of proposed rulemaking that has been published on or before the date of enactment of this subchapter, not later than 1 year after such date of enactment).

''(2) Such determination or designation shall be published in the Federal Register, together with a succinct statement of the basis for the determination or designation.

''(c) INITIAL COST-BENEFIT ANALYSIS.—(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

''(B)(i) When an agency, the Director, or a designee of the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

''(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment in the same manner as if the initial cost-benefit analysis had been issued with the notice of proposed rulemaking.

''(2) Each initial cost-benefit analysis shall contain—

''(A) a succinct analysis of the benefits of the proposed rule, including any beneficial effects that cannot be quantified, and an explanation of how the agency anticipates such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

''(B) a succinct analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

''(C) a succinct description (including an analysis of the costs and benefits) of reasonable alternatives for achieving the objectives of the statute, including, where such alternatives exist, alternatives that—

''(i) require no government action, where the agency has discretion under the statute granting the rulemaking authority not to promulgate a rule;

''(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply;

''(iii) employ performance-based standards, market-based mechanisms, or other flexible regulatory options that permit the greatest flexibility in achieving the regulatory result that the statutory provision authorizing the rule is designed to produce; or

''(iv) employ voluntary standards;

''(D) in any case in which the proposed rule is based on one or more scientific evaluations, scientific information, or a risk assessment, or is subject to the risk assessment requirements of subchapter III, a description of the actions undertaken by the agency to verify the quality, reliability, and relevance of such scientific evaluation, scientific information, or risk assessment; and

''(E) an explanation of how the proposed rule is likely to meet the decisional criteria of section 624.

''(d) FINAL COST-BENEFIT ANALYSIS.—(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

''(2) Each final cost-benefit analysis shall contain—

''(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking record, including flexible regulatory options of the type described in subsection (c)(2)(C)(iii), and a description of the persons likely to receive such benefits and bear such costs; and

''(B) an analysis, based upon the rulemaking record considered as a whole, of how the rule meets the decisional criteria in section 624.

''(3) In considering the benefits and costs, the agency, when appropriate, shall consider the benefits and costs incurred by all of the affected persons or classes of persons (including specially affected subgroups).

''(e) REQUIREMENTS FOR COST-BENEFIT ANALYSES.—(1)(A) The description of the benefits and costs of a proposed and a final rule required under this section shall include, to the extent feasible, a quantification or numerical estimate of the quantifiable benefits and costs.

''(B) The quantification or numerical estimate shall—

''(i) be made in the most appropriate unit of measurement, using comparable assumptions, including time periods;

''(ii) specify the ranges of predictions; and

''(iii) explain the margins of error involved in the quantification methods and the uncertainties and variabilities in the estimates used.

''(C) An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a final rule pursuant to this section in as precise and succinct a manner as possible.

''(D) The agency evaluation of the relationship of benefits to costs shall be clearly articulated.

''(E) An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

''(F) Nothing in this subsection shall be construed to expand agency authority beyond the delegated authority arising from the statute granting the rulemaking authority.

''(2) Where practicable and when understanding industry-by-industry effects is of central importance to a rulemaking, the description of the benefits and costs of a proposed and final rule required under this section shall describe such benefits and costs on an industry by industry basis.

''(f) HEALTH, SAFETY, OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) A major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources; and

''(B) the agency publishes in the Federal Register, together with such finding, a succinct statement of the basis for the finding.

''(2) Not later than 180 days after the promulgation of a final major rule to which this section applies, the agency shall comply with the provisions of this subchapter and, as thereafter necessary, revise the rule.

''§ 623. Agency regulatory review

''(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

''(2) In selecting rules for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

''(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) a rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

''(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii).

''(3) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(4) Any interpretive rule, general statement of policy, or guidance that has the force and effect of a rule under section 621(9) shall be treated as a rule for purposes of this section.

''(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), and subject to subsection (c), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

''(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (d) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) The schedule shall contain, at a minimum, all rules listed on the preliminary schedule.

''(4) The head of the agency shall modify the agency's schedule under this section to reflect any change ordered by the court under subsection (e) or subsection (g)(3) or contained in an appropriations Act under subsection (f).

''(c) PETITIONS AND COMMENTS PROPOSING ADDITION OF RULES TO THE SCHEDULE.—(1) Notwithstanding section 553(*l*), a petition to amend or repeal a major rule or an interpretative rule, general statement of policy, or guidance on grounds arising under this subchapter may only be filed during the 180-day comment period under subsection (a) and not at any other time. Such petition shall be reviewed only in accordance with this subsection.

''(2) The head of the agency shall, in response to petitions received during the rulemaking to establish the schedule, place on the final schedule for the completion of review within the first 3 years of the schedule any rule for which a petition, on its face, together with any relevant comments received in the rulemaking under subsection (a), establishes that there is a substantial likelihood that, considering the future impact of the rule—

''(A) the rule is a major rule under section 621(5)(A); and

(B) the head of the agency would not be able to make the findings required by section 624 with respect to the rule.

''(3) For the purposes of paragraph (2), the head of the agency may consolidate multiple petitions on the same rule into 1 determination with respect to review of the rule.

''(4) The head of the agency may, at the sole discretion of the head of the agency, add to the schedule any other rule suggested by a commentator during the rulemaking under subsection (a).

''(d) CRITERIA FOR ESTABLISHING DEADLINES FOR REVIEW.—The schedules in subsections (a) and (b) shall establish deadlines for review of each rule on the schedule that take into account—

''(1) the extent to which, for a particular rule, the preliminary views of the agency are that—

''(A) the rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) the rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

''(C) the rule could be revised in a manner allowed by the statute authorizing the rule so as to meet the decisional criteria under section 624 and to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

''(2) the importance of each rule relative to other rules being reviewed under this section; and

''(3) the resources expected to be available to the agency under subsection (f) to carry out the reviews under this section.

''(e) JUDICIAL REVIEW.—(1) Notwithstanding section 625 and except as provided otherwise in this subsection, agency compliance or noncompliance with the requirements of this section shall be subject to judicial review in accordance with section 706 of this title.

''(2) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review agency action pursuant to subsections (a), (b), and (c).

''(3) A petition for review of final agency action under subsection (b) or subsection (c) shall be filed not later than 60 days after the agency publishes the final rule under subsection (b).

''(4) The court upon review, for good cause shown, may extend the 3-year deadline under subsection (c)(2) for a period not to exceed 1 additional year.

''(5) The court shall remand to the agency any schedule under subsection (b) only if final agency action under subsection (b) is arbitrary or capricious. Agency action under subsection (d) shall not be subject to judicial review.

''(f) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

''(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

''(B) include a list of rules which may terminate during the year for which the budget proposal is made.

''(2) Amendments to the schedule under subsection (b) that change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may submit, to the House of Representatives or Senate appropriations committee (as the case may be), amendments to the schedule published by an agency under subsection (b) that change a deadline for review of a rule. The appropriations committee to which such amendments have been submitted shall include or propose the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

''(g) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

''(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

''(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

''(i) addresses public comments generated by the notice in subparagraph (A);

''(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether it satisfies the decisional criteria of section 624;

''(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

''(iv) solicits public comment on the preliminary determination for the rule; and

''(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

''(i) addresses public comments generated by the notice in subparagraph (B); and

''(ii) contains a final determination of whether to continue, amend, or repeal the rule; and

''(iii) if the agency determines to continue the rule and the rule is a major rule, contains findings necessary to satisfy the decisional criteria of section 624; and

''(iv) if the agency determines to amend the rule, contains a notice of proposed rulemaking under section 553.

''(2) If the final determination of the agency is to continue or repeal the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

''(3) An interested party may petition the U.S. Court of Appeals for the District of Columbia Circuit to extend the period for review of a rule on the schedule for up to two years and to grant such equitable relief as is appropriate, if such petition establishes that—

''(A) the rule is likely to terminate under subsection (i);

''(B) the agency needs additional time to complete the review under this subsection;

''(C) terminating the rule would not be in the public interest; and

''(D) the agency has not expeditiously completed its review.

''(h) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend a major rule under subsection (g)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (g)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

''(i) TERMINATION OF RULES.—If the head of an agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) and subsection (c), the head of the agency shall not enforce the rule, and the rule shall terminate by operation of law as of such date.

''(j) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue or repeal a major rule under subsection (g)(1)(C) shall be considered final agency action.

''(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (h) by the date established under such subsection shall be considered final agency action.

''§ 624. Decisional criteria

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(4) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

''(2)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, and the agency head provides an explanation of those consideration, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(3) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(d) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.

''§ 625. Jurisdiction and judicial review

''(a) REVIEW.—Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall be subject to judicial review only in accordance with this section.

''(b) JURISDICTION.—(1) Except as provided in subsection (e), subject to paragraph (2), each court with jurisdiction under a statute to review final agency action to which this title applies, has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III.

''(2) Except as provided in subsection (e), no claims of noncompliance with this subchapter or subchapter III shall be reviewed separate or apart from judicial review of the final agency action to which they relate.

''(c) RECORD.—Any analysis or review required under this subchapter or subchapter III shall constitute part of the rulemaking record of the final agency action to which it pertains for the purposes of judicial review.

''(d) STANDARDS FOR REVIEW.—In any proceeding involving judicial review under section 706 or under the statute granting the rulemaking authority, failure to comply with this subchapter or subchapter III may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise provided by law).

''(e) INTERLOCUTORY REVIEW.—(1) The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review—

''(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

''(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

''(2) A petition for review of agency action under paragraph (1) shall be filed within 60 days after the agency makes the determination or certification for which review is sought.

''(3) Except as provided in this subsection, no court shall have jurisdiction to review any agency determination or certification specified in paragraph (1).

''§ 626. Deadlines for rulemaking

''(a) STATUTORY.—All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(b) COURT-ORDERED.—All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(c) OBLIGATION TO REGULATE.—In any case in which the failure to promulgate a rule by a deadline occurring during the 5-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''§ 627. Special rule

''Notwithstanding any other provision of the Comprehensive Regulatory Reform Act of 1995, or the amendments made by such Act, for purposes of this subchapter and subchapter IV, the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), the National Credit Union Administration, the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the Farm Credit Administration, shall have authority with respect to such agency that otherwise would be provided under such subchapters to the Director, a designee of the President, Vice President, or any officer designated or delegated with authority under such subchapters.

''§ 628. Requirements for major environmental management activities

''(a) DEFINITION.—For purposes of this section, the term 'major environmental management activity' means—

''(1) a corrective action requirement under the Solid Waste Disposal Act;

''(2) a response action or damage assessment under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(3) the treatment, storage, or disposal of radioactive or mixed waste in connection with site restoration activity; and

''(4) Federal guidelines for the conduct of such activity, including site-specific guidelines,

the expected costs, expenses, and damages of which are likely to exceed, in the aggregate, $10,000,000.

''(b) APPLICABILITY.—A major environmental management activity is subject to this section unless construction has commenced on a significant portion of the activity, and—

''(1) it is more cost-effective to complete construction of the work than to apply the provisions of this subchapter; or

''(2) the application of the provisions of this subchapter, including any delays caused thereby, will result in an actual and immediate risk to human health or welfare.

''(c) REQUIREMENT TO PREPARE RISK ASSESSMENT.—(1) For each major environmental management activity or significant unit thereof that is proposed by the agency after the date of enactment of this subchapter, is pending on the date of enactment of this subchapter, or is subject to a granted petition for review pursuant to section 623, the head of an agency shall prepare—

''(A) a risk assessment in accordance with subchapter III; and

''(B) a cost-benefit analysis equivalent to that which would be required under this subchapter, if such subchapter were applicable.

''(2) In conducting a risk assessment or cost-benefit analysis under this section, the head of the agency shall incorporate the reasonably anticipated probable future use of the land and its surroundings (and any associated media and resources of either) affected by the environmental management activity.

''(3) For actions pending on the date of enactment of this section or proposed during the year following the date of enactment of this section, in lieu of preparing a risk assessment in accordance with subchapter III or cost-benefit analysis under this subchapter, an agency may use other appropriately developed analyses that allow it to make the judgments required under subsection (d).

''(d) REQUIREMENT.—The requirements of this subsection shall supplement, and not supersede, any other requirement provided by any law. A major environmental management activity under this section shall meet the decisional criteria under section 624 as if it is a major rule under such section.

''§ 629. Petition for alternative method of compliance

''(a) Except as provided in subsection (e), or unless prohibited by the statute authorizing the rule, any person subject to a major rule may petition the relevant agency to modify or waive the specific requirements of the major rule (or any portion thereof) and to authorize such person to demonstrate compliance through alternative means not otherwise permitted by the major rule. The petition shall identify with reasonable specificity the requirements for which the waiver is sought and the alternative means of compliance being proposed.

''(b) The agency shall grant the petition if the petition shows that there is a reasonable likelihood that the proposed alternative means of compliance—

''(1) would achieve the identified benefits of the major rule with at least an equivalent level of protection of health, safety, and the environment as would be provided by the major rule; and

''(2) would not impose an undue burden on the agency that would be responsible for enforcing such alternative means of compliance.

''(c) A decision to grant or to deny a petition under this subsection shall be made not later than 180 days after the petition is submitted, but in no event shall agency action taken pursuant to this section be subject to judicial review.

''(d) Following a decision to grant or deny a petition under this section, no further petition for such rule, submitted by the same person, shall be granted unless such petition pertains to a different facility or installation owned or operated by such person or unless such petition is based on a significant change in a fact, circumstance, or provision of law underlying or otherwise related to the rule occurring since the initial petition was granted or denied, that warrants the granting of such petition.

''(e) If the statute authorizing the rule which is the subject of the petition provides procedures or standards for an alternative method of compliance the petition shall be reviewed solely under the terms of the statute.

''SUBCHAPTER III—RISK ASSESSMENTS

''§ 631. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'exposure assessment' means the scientific determination of the intensity, frequency and duration of actual or potential exposures to the hazard in question;

''(3) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

''(4) the term 'major rule' has the meaning given such term in section 621(5);

''(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

''(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

''(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper bounds as appropriate, that permits the manager to eliminate risks from further consideration and analysis, or to help establish priorities for agency action; and

''(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

''§ 632. Applicability

''(a) IN GENERAL.—Except as provided in subsection (c), for each proposed and final major rule, a primary purpose of which is to protect human health, safety, or the environment, or a consequence of which is a substantial substitution risk, that is proposed by an agency after the date of enactment of this subchapter, or is pending on the date of enactment of this subchapter, the head of each agency shall prepare a risk assessment in accordance with this subchapter.

''(b) APPLICATION OF PRINCIPLES.—(1) Except as provided in subsection (c), the head of each agency shall apply the principles in this subchapter to any risk assessment conducted to support a determination by the agency of risk to human health, safety, or the environment, if such determination would be likely to have an effect on the United States economy equivalent to that of a major rule.

''(2) In applying the principles of this subchapter to risk assessments other than those in subsections (a), (b)(1), and (c), the head of each agency shall publish, after notice and public comment, guidelines for the conduct of such other risk assessments that adapt the principles of this subchapter in a manner consistent with section 633(a)(4) and the risk assessment and risk management needs of the agency.

''(3) An agency shall not, as a condition for the issuance or modification of a permit, conduct, or require any person to conduct, a risk assessment, except if the agency finds that the risk assessment meets the requirements of section 633 (a) through (f).

''(c) EXCEPTIONS.—(1) This subchapter shall not apply to risk assessments performed with respect to—

''(A) a situation for which the agency finds good cause that conducting a risk assessment is impracticable due to an emergency or health and safety threat that is likely to result in significant harm to the public or natural resources;

''(B) a rule or agency action that authorizes the introduction into commerce, or initiation of manufacture, of a substance, mixture, or product, or recognizes the marketable status of a product;

''(C) a human health, safety, or environmental inspection, an action enforcing a statutory provision, rule, or permit, or an individual facility or site permitting action, except to the extent provided by subsection (b)(3);

''(D) a screening analysis clearly identified as such; or

''(E) product registrations, reregistrations, tolerance settings, and reviews of premanufacture notices under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

''(2) An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(D) if the result of the analysis is used—

''(A) as the basis for imposing a restriction on a previously authorized substance, product, or activity after its initial introduction into manufacture or commerce; or

''(B) as the basis for a formal determination by the agency of significant risk from a substance or activity.

''(3) This subchapter shall not apply to any food, drug, or other product label or labeling, or to any risk characterization appearing on any such label.

''§ 633. Principles for risk assessments

''(a) IN GENERAL.—(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

''(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

''(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

''(4) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor considered by the agency as appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

''(5) An agency shall not be required to repeat discussions or explanations in each risk assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that was prepared consistent with this section.

''(b) ITERATIVE PROCESS.—(1) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

''(2) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk and the resulting agency action.

''(c) DATA QUALITY.—(1) The head of each agency shall base each risk assessment only on the best reasonably available scientific data and scientific understanding, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions that are reasonably expected to be encountered.

''(2) The agency shall select data for use in a risk assessment based on a reasoned analysis of the quality and relevance of the data, and shall describe such analysis.

''(3) In making its selection of data, the agency shall consider whether the data were published in the peer-reviewed scientific literature, or developed in accordance with good laboratory practice or published or other appropriate protocols to ensure data quality, such as the standards for the development of test data promulgated pursuant to section 4 of the Toxic Substances Control Act (15 U.S.C. 2603), and the standards for data requirements promulgated pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a), or other form of independent evaluation.

''(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered by the agency in the analysis under paragraph (2).

''(5) When conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information including the likelihood of alternative interpretations of the data and emphasizing—

''(A) postulates that represent the most reasonable inferences from the supporting scientific data; and

''(B) when a risk assessment involves an extrapolation from toxicological studies, data with the greatest scientific basis of support for the resulting harm to affected individuals, populations, or resources.

''(6) The head of an agency shall not automatically incorporate or adopt any recommendation or classification made by any foreign government, the United Nations, any international governmental body or standards-making organization, concerning the health effects value of a substance, except as provided in paragraph (2) of this subsection. Nothing in this paragraph shall be construed to affect the implementation or application of any treaty or international trade agreement to which the United States is a party.

''(d) USE OF POLICY JUDGMENTS.—(1) An agency shall not use policy judgments, including default assumptions, inferences,

models or safety factors, when relevant and adequate scientific data and scientific understanding, including site-specific data, are available. The agency shall modify or decrease the use of policy judgments to the extent that higher quality scientific data and understanding become available.

''(2) When a risk assessment involves choice of a policy judgment, the head of the agency shall—

''(A) identify the policy judgment and its scientific or policy basis, including the extent to which the policy judgment has been validated by, or conflicts with, empirical data;

''(B) explain the basis for any choices among policy judgments; and

''(C) describe reasonable alternative policy judgments that were not selected by the agency for use in the risk assessment, and the sensitivity of the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

''(3) An agency shall not inappropriately combine or compound multiple policy judgments.

''(4) The agency shall, subject to notice and opportunity for public comment, develop and publish guidelines describing the agency's default policy judgments and how they were chosen, and guidelines for deciding when and how, in a specific risk assessment, to adopt alternative policy judgments or to use available scientific information in place of a policy judgment.

''(e) RISK CHARACTERIZATION.—In each risk assessment, the agency shall include in the risk characterization, as appropriate, each of the following:

''(1) A description of the hazard of concern.

''(2) A description of the populations or natural resources that are the subject of the risk assessment.

''(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

''(4) A description of the nature and severity of the harm that could plausibly occur.

''(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

''(f) PRESENTATION OF RISK ASSESSMENT CONCLUSIONS.—(1) To the extent feasible and scientifically appropriate, the head of an agency shall—

''(A) express the overall estimate of risk as a range or probability distribution that reflects variabilities, uncertainties and data gaps in the analysis;

''(B) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the reasonably expected risk to the general population and, where appropriate, to more highly exposed or sensitive subpopulations; and

''(C) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

''(2) When scientific data and understanding that permits relevant comparisons of risk are reasonably available, the agency shall use such information to place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context.

''(3) When scientifically appropriate information on significant substitution risks to human health, safety, or the environment is reasonably available to the agency, or is contained in information provided to the agency by a commentator, the agency shall describe such risks in the risk assessments.

''(g) PEER REVIEW.—(1) Each agency shall provide for peer review in accordance with this section of any risk assessment subject to the requirements of this subchapter that forms that basis of any major rule or a major environmental management activity.

''(2) Each agency shall develop a systematic program for balanced, independent, and external peer review that—

''(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other formal or informal devices that are balanced and comprised of participants selected on the basis of their expertise relevant to the sciences involved in regulatory decisions and who are independent of the agency program that developed the risk assessment being reviewed;

''(B) shall not exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential interest in the outcome, if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person;

''(C) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and agency response to all significant peer review comments; and

''(D) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

''(3) Each peer review shall include a report to the Federal agency concerned detailing the scientific and technical merit of data and the methods used for the risk assessment, and shall identify significant peer review comments. Each agency shall provide a written response to all significant peer review comments. All peer review comments, conclusions, composition of the panels, and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

''(4)(A) The Director of the Office of Science and Technology Policy shall develop a systematic program to oversee the use and quality of peer review of risk assessments.

''(B) The Director or the designee of the President may order an agency to conduct peer review for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions, or that would establish an important precedent.

''(5) The proceedings of peer review panels under this section shall not be subject to the Federal Advisory Committee Act.

''(h) PUBLIC PARTICIPATION.—The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

''§ 634. Petition for review of a major free-standing risk assessment

''(a) Any interested person may petition an agency to conduct a scientific review of a risk assessment conducted or adopted by the agency, except for a risk assessment used as the basis for a major rule or a site-specific risk assessment.

''(b) The agency shall utilize external peer review, as appropriate, to evaluate the claims and analyses in the petition, and shall consider such review in making its determination of whether to grant the petition.

''(c) The agency shall grant the petition if the petition establishes that there is a reasonable likelihood that—

''(1)(A) the risk assessment that is the subject of the petition was carried out in a manner substantially inconsistent with the principles in section 633; or

''(B) the risk assessment that is the subject of the petition does not take into account material significant new scientific data and scientific understanding;

''(2) the risk assessment that is the subject of the petition contains significantly different results than if it had been properly conducted pursuant to subchapter III; and

''(3) a revised risk assessment will provide the basis for reevaluating an agency determination of risk, and such determination currently has an effect on the United States economy equivalent to that of major rule.

''(d) A decision to grant, or final action to deny, a petition under this subsection shall be made not later than 180 days after the petition is submitted.

''(e) If the agency grants the petition, it shall complete its review of the risk assessment not later than 1 year after its decision to grant the petition. If the agency revises the risk assessment, in response to its review, it shall do so in accordance with section 633.

''§ 635. Comprehensive risk reduction

''(a) SETTING PRIORITIES.—The head of each agency with programs to protect human health, safety, or the environment shall set priorities for the use of resources available to address those risks to human health, safety, and the environment, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

''(b) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each agency in subsection (a) shall incorporate the priorities identified under subsection (a) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner using the priorities set under subsection (a), the basis for that determination, and explicitly identify how the agency's requested budget and regulatory agenda reflect those priorities.

''(c) REPORTS BY THE NATIONAL ACADEMY OF SCIENCES.—(1) Not later than 6 months after the date of enactment of this section, the Director of the Office of Science and Technology Policy shall enter into an arrangement with the National Academy of Sciences to investigate and report on comparative risk analysis. The arrangement shall provide, to the extent feasible, for—

''(A) 1 or more reports evaluating methods of comparative risk analysis that would be appropriate for agency programs related to human health, safety, and the environment to use in setting priorities for activities; and

''(B) a report providing a comprehensive and comparative analysis of the risks to human health, safety, and the environment that are addressed by agency programs to protect human health, safety, and the environment, along with companion activities to disseminate the conclusions of the report to the public.

''(2) The report or reports prepared under paragraph (1)(A) shall be completed not later than 3 years after the date of enactment of this section. The report under paragraph (1)(B) shall be completed not later than 4 years after the date of enactment of this section, and shall draw, as appropriate, upon the insights and conclusions of the report or reports made under paragraph (1)(A). The companion activities under paragraph (1)(B) shall be completed not later than 5 years after the date of enactment of this section.

''(3)(A) The head of an agency with programs to protect human health, safety, and

the environment shall incorporate the recommendations of reports under paragraph (1) in revising any priorities under subsection (a).

''(B) The head of the agency shall submit a report to the appropriate Congressional committees of jurisdiction responding to the recommendations from the National Academy of Sciences and describing plans for utilizing the results of comparative risk analysis in agency budget, strategic planning, regulatory agenda, enforcement, and research and development activities.

''(4) Following the submission of the report in paragraph (2), for the next 5 years, the head of the agency shall submit, with the budget request submitted to Congress under section 1105(a) of title 31, a description of how the requested budget of the agency and the strategic planning activities of the agency reflect priorities determined using the recommendations of reports issued under subsection (a). The head of the agency shall include in such description—

''(A) recommendations on the modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

''(B) recommendation on the modification or elimination of statutory or judicially mandated deadlines,

that would assist the head of the agency to set priorities in activities to address the risks to human health, safety, or the environment that incorporate the priorities developed using the recommendations of the reports under subsection (a), resulting in more cost-effective programs to address risk.

''(5) For each budget request submitted in accordance with paragraph (4), the Director shall submit an analysis of ways in which resources could be reallocated among Federal agencies to achieve the greatest overall net reduction in risk.

''§ 636. Rule of construction

''Nothing in this subchapter shall be construed to—

''(1) preclude the consideration of any data or the calculation of any estimate to more fully describe or analyze risk, scientific uncertainty, or variability; or

''(2) require the disclosure of any trade secret or other confidential information.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''§ 641. Procedures

''(a) IN GENERAL.—The Director or a designee of the President shall—

''(1) establish and, as appropriate, revise procedures for agency compliance with this chapter; and

''(2) monitor, review, and ensure agency implementation of such procedures.

''(b) PUBLIC COMMENT.—Procedures established pursuant to subsection (a) shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

''(c) TIME FOR REVIEW.—(1) If procedures established pursuant to subsection (a) include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, or a designee of the President.

''(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President.

''(3)(A) The times for each such review may be extended for good cause by the President or by an officer to whom the President has delegated his authority pursuant to section 642 for an additional 45 days. At the request of the head of an agency, the President or such an officer may grant an additional extension of 45 days.

''(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

''§ 642. Delegation of authority

''(a) IN GENERAL.—The President may delegate the authority granted by this subchapter to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

''(b) NOTICE.—Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

''§ 643. Judicial review

''The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 642 and agency compliance or noncompliance with the procedure under section 641 shall not be subject to judicial review.

''§ 644. Regulatory agenda

''The head of each agency shall provide, as part of the semiannual regulatory agenda published under section 602—

''(1) a list of risk assessments subject to subsection 632 (a) or (b)(1) under preparation or planned by the agency;

''(2) a brief summary of relevant issues addressed or to be addressed by each listed risk assessment;

''(3) an approximate schedule for completing each listed risk assessment;

''(4) an identification of potential rules, guidance, or other agency actions supported or affected by each listed risk assessment; and

''(5) the name, address, and telephone number of an agency official knowledgeable about each listed risk assessment.''.

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

''(c)(1) Except as provided in paragraph (2), no final rule for which a final regulatory flexibility analysis is required under this section shall be promulgated unless the agency finds that the final rule minimizes significant economic impact on small entities to the maximum extent possible, consistent with the purposes of this subchapter, the objectives of the rule, and the requirements of applicable statutes.

''(2) If an agency determines that a statute requires a rule to be promulgated that does not satisfy the criterion of paragraph (1), the agency shall—

''(A) include a written explanation of such determination in the final regulatory flexibility analysis; and

''(B) transmit the final regulatory flexibility analysis to Congress when the final rule is promulgated.''.

(2) JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

''§ 611. Judicial review

''(a)(1) For any rule described in section 603(a), and with respect to which the agency—

''(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities;

''(B) prepared a final regulatory flexibility analysis pursuant to section 604; or

''(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

''(2)(A) Notwithstanding any other provision of law, an affected small entity shall have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such rule.

''(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year after the date the analysis is made available to the public.

''(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be subject to the provisions of, or otherwise required to comply with, the final rule.

''(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

''(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of section 604.

''(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

''(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

''(A) to prepare the analysis required by section 604; or

''(B) to take corrective action consistent with section 604.

''(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

''(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.''.

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO TESTING.—In applying section 409(c)(3)(A), 512(d)(1), or 721(b)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A), 360b(d)(1), 379e(b)(5)(B)), the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency shall not prohibit or refuse to approve a substance or product on the basis of safety, where the substance or product presents a negligible or insignificant foreseeable risk to human health resulting from its intended use.

(d) TOXIC RELEASE INVENTORY REVIEW.—Section 313(d) of the Emergency Planning

and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)) is amended—

(1) in paragraph (2) by inserting after ''epidemiological or other population studies,'' the following: ''and on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases''; and

(2) in subsection (e)(1), by inserting before ''Within 180 days'' the following: ''The Administrator shall grant any petition that establishes substantial evidence that the criteria in subparagraph (A) either are or are not met.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following:

''CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

''SUBCHAPTER I—REGULATORY ANALYSIS

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''SUBCHAPTER III—RISK ASSESSMENTS

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

SEC. 5. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is amended—

(1) by striking section 706; and

(2) by adding at the end the following new sections:

''§ 706. Scope of review

''(a) To the extent necessary to reach a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

''(1) compel agency action unlawfully withheld or unreasonably delayed; and

''(2) hold unlawful and set aside agency action, findings and conclusions found to be—

''(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

''(B) contrary to constitutional right, power, privilege, or immunity;

''(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

''(D) without observance of procedure required by law;

''(E) unsupported by substantial evidence in a proceeding subject to sections 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute;

''(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or

''(G) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

''(b) In making the determinations set forth in subsection (a), the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

''§ 707. Consent decrees

''In interpreting any consent decree in effect on or after the date of enactment of this section that imposes on an agency an obligation to initiate, continue, or complete rulemaking proceedings, the court shall not enforce the decree in a way that divests the agency of discretion clearly granted to the agency by statute to respond to changing circumstances, make policy or managerial choices, or protect the rights of third parties.

''§ 708. Affirmative defense

''Notwithstanding any other provision of law, it shall be an affirmative defense in any enforcement action brought by an agency that the regulated person or entity reasonably relied on and is complying with a rule, regulation, adjudication, directive, or order of such agency or any other agency that is incompatible, contradictory, or otherwise cannot be reconciled with the agency rule, regulation, adjudication, directive, or order being enforced.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 7 of title 5, United States Code, is amended by striking the item relating to section 706 and inserting the following new items:

''706. Scope of review.
''707. Consent decrees.
''708. Affirmative defense.''.

SEC. 6. CONGRESSIONAL REVIEW.

(a) FINDING.—The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the implementation of certain significant final rules is imposed in order to provide Congress an opportunity for review.

(b) IN GENERAL.—Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

''CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

''§ 801. Congressional review

''(a)(1)(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

''(i) a copy of the rule;

''(ii) a concise general statement relating to the rule; and

''(iii) the proposed effective date of the rule.

''(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

''(i) a complete copy of the cost-benefit analysis of the rule, if any;

''(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

''(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

''(iv) any other relevant information or requirements under any other Act and any relevant Executive orders, such as Executive Order No. 12866.

''(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

''(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

''(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

''(3) A major rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

''(A) the later of the date occurring 60 days after the date on which—

''(i) the Congress receives the report submitted under paragraph (1); or

''(ii) the rule is published in the Federal Register;

''(B) if the Congress passes a joint resolution of disapproval described under section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

''(i) on which either House of Congress votes and fails to override the veto of the President; or

''(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

''(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

''(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

''(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

''(b) A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 802.

''(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this chapter may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

''(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

''(A) necessary because of an imminent threat to health or safety or other emergency;

''(B) necessary for the enforcement of criminal laws;

''(C) necessary for national security; or

''(D) issued pursuant to a statute implementing an international trade agreement.

''(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

''(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 802 shall apply to such rule in the succeeding Congress.

''(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

''(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

''(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a final rule can take effect.

''(3) A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

''(e)(1) Section 802 shall apply in accordance with this subsection to any major rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which the Comprehensive Regulatory Reform Act of 1995 takes effect.

''(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

''(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of enactment of the Comprehensive Regulatory Reform Act of 1995; and

''(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

''(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

''(g) If the Congress does not enact a joint resolution of disapproval under section 802, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

''§ 802. Congressional disapproval procedure

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 801(a) is received by Congress and ending 60 days thereafter, the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ___ relating to ___, and such rule shall have no force or effect.'. (The blank spaces being appropriately filled in.)

''(b)(1) A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

''(2) For purposes of this subsection the term 'submission or publication date' means the later of the date on which—

''(A) the Congress receives the report submitted under section 801(a)(1); or

''(B) the rule is published in the Federal Register.

''(c) If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d)(1) When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(1) The resolution of the other House shall not be referred to a committee.

''(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(B) the vote on final passage shall be on the resolution of the other House.

''(f) This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''§ 803. Special rule on statutory, regulatory, and judicial deadlines

''(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

''(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

''§ 804. Definitions

''(a) For purposes of this chapter—

''(1) the term 'Federal agency' means any agency as that term is defined in section 551(1) (relating to administrative procedure);

''(2) the term 'major rule' has the same meaning given such term in section 621(5); and

''(3) the term 'final rule' means any final rule or interim final rule.

''(b) As used in subsection (a)(3), the term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

''§ 805. Judicial review

''No determination, finding, action, or omission under this chapter shall be subject to judicial review.

''§ 806. Applicability; severability

''(a) This chapter shall apply notwithstanding any other provision of law.

''(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

''§ 807. Exemption for monetary policy

''Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act and shall

apply to any rule that takes effect as a final rule on or after such effective date.

(d) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) MAJOR RULE.—The term ''major rule'' has the same meaning as defined in section 621(5)(A)(i) of title 5, United States Code. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States or a statute implementing an international trade agreement; or

(C) regulations related to agency organization, management, or personnel.

(2) AGENCY.—The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Not later than June 1, 1997, and each June 1 thereafter, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of major rules and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection not later than 2 years after the date of enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the date of enactment of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of major rules by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for major rules, grouped by regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government administrative costs.

(C) An accounting statement shall estimate the benefits of major rules by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) Analyses prepared by the President of the cumulative impact of major rules in Federal regulatory programs covered in the accounting statement on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to sections 3 and 7 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 4 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—Not later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of the Administrative Procedure Act (as amended by section 3 of this Act); and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

(b) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

AMENDMENT NO. 1555

In lieu of the language to be proposed, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Comprehensive Regulatory Reform Act of 1995''.

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''this subchapter'' and inserting ''this chapter and chapters 7 and 8'';

(2) in paragraph (13), by striking ''and'';

(3) in paragraph (14), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following new paragraph:

''(15) 'Director' means the Director of the Office of Management and Budget.''.

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended to read as follows:

''§ 553. Rulemaking

''(a) APPLICABILITY.—This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

''(1) a matter pertaining to a military or foreign affairs function of the United States;

''(2) a matter relating to the management or personnel practices of an agency;

''(3) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency; or

''(4) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

''(b) NOTICE OF PROPOSED RULEMAKING.—General notice of proposed rulemaking shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice of the proposed rulemaking in accordance with law. Each notice of proposed rulemaking shall include—

''(1) a statement of the time, place, and nature of public rulemaking proceedings;

''(2) a succinct explanation of the need for and specific objectives of the proposed rule, including an explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(5);

''(3) a succinct explanation of the specific statutory basis for the proposed rule, including an explanation of—

''(A) whether the interpretation is clearly required by the text of the statute; or

''(B) if the interpretation is not clearly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

''(4) the terms or substance of the proposed rule;

''(5) a summary of any initial analysis of the proposed rule required to be prepared or issued pursuant to chapter 6;

''(6) a statement that the agency seeks proposals from the public and from State and local governments for alternative methods to accomplish the objectives of the rulemaking that are more effective or less burdensome than the approach used in the proposed rule; and

''(7) a statement specifying where the file of the rulemaking proceeding maintained pursuant to subsection (j) may be inspected and how copies of the items in the file may be obtained.

''(c) PERIOD FOR COMMENT.—The agency shall give interested persons not less than 60 days after providing the notice required by subsection (b) to participate in the rulemaking through the submission of written data, views, or arguments.

''(d) GOOD CAUSE EXCEPTION.—Unless notice or hearing is required by statute, a final rule may be adopted and may become effective without prior compliance with subsections (b) and (c) and (e) through (g) if the agency for good cause finds that providing notice and public procedure thereon before the rule becomes effective is impracticable, unnecessary, or contrary to the public interest. If a rule is adopted under this subsection, the agency shall publish the rule in the Federal Register with the finding and a succinct explanation of the reasons therefor.

''(e) PROCEDURAL FLEXIBILITY.—To collect relevant information, and to identify and elicit full and representative public comment on the significant issues of a particular rulemaking, the agency may use such other procedures as the agency determines are appropriate, including—

''(1) the publication of an advance notice of proposed rulemaking;

''(2) the provision of notice, in forms which are more direct than notice published in the Federal Register, to persons who would be substantially affected by the proposed rule but who are unlikely to receive notice of the proposed rulemaking through the Federal Register;

''(3) the provision of opportunities for oral presentation of data, views, information, or rebuttal arguments at informal public hearings, meetings, and round table discussions, which may be held in the District of Columbia and other locations;

''(4) the establishment of reasonable procedures to regulate the course of informal public hearings, meetings and round table discussions, including the designation of representatives to make oral presentations or engage in direct or cross-examination on behalf of several parties with a common interest in a rulemaking, and the provision of transcripts, summaries, or other records of all such public hearings and summaries of meetings and round table discussions;

''(5) the provision of summaries, explanatory materials, or other technical information in response to public inquiries concerning the issues involved in the rulemaking; and

''(6) the adoption or modification of agency procedural rules to reduce the cost or complexity of the procedural rules.

''(f) PLANNED FINAL RULE.—If the provisions of a final rule that an agency plans to adopt are so different from the provisions of the original notice of proposed rulemaking that the original notice did not fairly apprise the public of the issues ultimately to be resolved in the rulemaking or of the substance of the rule, the agency shall publish in the Federal Register a notice of the final rule the agency plans to adopt, together with the information relevant to such rule that is required by the applicable provisions of this section and that has not previously been published in the Federal Register. The agency shall allow a reasonable period for comment on such planned final rule prior to its adoption.

''(g) STATEMENT OF BASIS AND PURPOSE.—An agency shall publish each final rule it adopts in the Federal Register, together with a concise statement of the basis and purpose of the rule and a statement of when the rule may become effective. The statement of basis and purpose shall include—

''(1) an explanation of the need for, objectives of, and specific statutory authority for, the rule;

''(2) a discussion of, and response to, any significant factual or legal issues presented by the rule, or raised by the comments on the proposed rule, including a description of the reasonable alternatives to the rule proposed by the agency and by interested persons, and the reasons why such alternatives were rejected;

''(3) a succinct explanation of whether the specific statutory basis for the rule is expressly required by the text of the statute, or if the specific statutory interpretation upon which the rule is based is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and why the agency has rejected other interpretations proposed in comments to the agency;

''(4) an explanation of how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file; and

''(5) a summary of any final analysis of the rule required to be prepared or issued pursuant to chapter 6.

''(h) NONAPPLICABILITY.—In the case of a rule that is required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 shall apply in lieu of subsections (c), (e), (f), and (g).

''(i) EFFECTIVE DATE.—An agency shall publish the final rule in the Federal Register not later than 60 days before the effective date of such rule. An agency may make a rule effective in less than 60 days after publication in the Federal Register if the rule grants or recognizes an exemption, relieves a restriction, or if the agency for good cause finds that such a delay in the effective date would be contrary to the public interest and publishes such finding and an explanation of the reasons therefor, with the final rule.

''(j) RULEMAKING FILE.—(1) The agency shall maintain a file for each rulemaking proceeding conducted pursuant to this section and shall maintain a current index to such file.

''(2) Except as provided in subsection (k), the file shall be made available to the public not later than the date on which the agency makes an initial publication concerning the rule.

''(3) The rulemaking file shall include—

''(A) the notice of proposed rulemaking, any supplement to, or modification or revision of, such notice, and any advance notice of proposed rulemaking;

''(B) copies of all written comments received on the proposed rule;

''(C) a transcript, summary, or other record of any public hearing conducted on the rulemaking;

''(D) copies, or an identification of the place at which copies may be obtained, of factual and methodological material that pertains directly to the rulemaking and that was considered by the agency in connection with the rulemaking, or that was submitted to or prepared by or for the agency in connection with the rulemaking; and

''(E) any statement, description, analysis, or other material that the agency is required to prepare or issue in connection with the rulemaking, including any analysis prepared or issued pursuant to chapter 6.

The agency shall place each of the foregoing materials in the file as soon as practicable after each such material becomes available to the agency.

''(k) CONFIDENTIAL TREATMENT.—The file required by subsection (j) need not include any material described in section 552(b) if the agency includes in the file a statement that notes the existence of such material and the basis upon which the material is exempt from public disclosure under such section. The agency may not substantially rely on any such material in formulating a rule unless it makes the substance of such material available for adequate comment by interested persons. The agency may use summaries, aggregations of data, or other appropriate mechanisms to protect the confidentiality of such material to the maximum extent possible.

''(*l*) RULEMAKING PETITION.—(1) Each agency shall give an interested person the right to petition—

''(A) for the issuance, amendment, or repeal of a rule;

''(B) for the amendment or repeal of an interpretive rule or general statement of policy or guidance; and

''(C) for an interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance.

''(2) The agency shall grant or deny a petition made pursuant to paragraph (1), and give written notice of its determination to the petitioner, with reasonable promptness, but in no event later than 18 months after the petition was received by the agency.

''(3) The written notice of the agency's determination shall include an explanation of the determination and a response to each

significant factual and legal claim that forms the basis of the petition.

''(m) JUDICIAL REVIEW.—(1) The decision of an agency to use or not to use procedures in a rulemaking under subsection (e) shall not be subject to judicial review.

''(2) The rulemaking file required under subsection (j) shall constitute the rulemaking record for purposes of judicial review.

''(3) No court shall hold unlawful or set aside an agency rule based on a violation of subsection (j), unless the court finds that such violation has precluded fair public consideration of a material issue of the rulemaking taken as a whole.

''(4)(A) Judicial review of compliance or noncompliance with subsection (j) shall be limited to review of action or inaction on the part of an agency.

''(B) A decision by an agency to deny a petition under subsection (*l*) shall be subject to judicial review immediately upon denial, as final agency action under the statute granting the agency authority to carry out its action.

''(n) CONSTRUCTION.—(1) Notwithstanding any other provision of law, this section shall apply to and supplement the procedures governing informal rulemaking under statutes that are not generally subject to this section.

''(2) Nothing in this section authorizes the use of appropriated funds available to any agency to pay the attorney's fees or other expenses of persons intervening in agency proceedings.''.

SEC. 4. ANALYSIS OF AGENCY RULES.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''§ 621. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'benefit' means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects, that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(3) the term 'cost' means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(4) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

''(5) the term 'major rule' means—

''(A) a rule or set of closely related rules that the agency proposing the rule, the Director, or a designee of the President determines is likely to have a gross annual effect on the economy of $50,000,000 or more in reasonably quantifiable increased costs; or

''(B) a rule that is otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President (and a designation or failure to designate under this clause shall not be subject to judicial review);

''(6) the term 'market-based mechanism' means a regulatory program that—

''(A) imposes legal accountability for the achievement of an explicit regulatory objective on each regulated person;

''(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, which flexibility shall, where feasible and appropriate, include, but not be limited to, the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

''(C) permits regulated persons to respond to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates;

''(7) the term 'performance-based standards' means requirements, expressed in terms of outcomes or goals rather than mandatory means of achieving outcomes or goals, that permit the regulated entity discretion to determine how best to meet specific requirements in particular circumstances;

''(8) the term 'reasonable alternatives' means the range of reasonable regulatory options that the agency has authority to consider under the statute granting rulemaking authority, including flexible regulatory options of the type described in section 622(c)(2)(C)(iii), unless precluded by the statute granting the rulemaking authority; and

''(9) the term 'rule' has the same meaning as in section 551(4), and—

''(A) includes any statement of general applicability that substantially alters or creates rights or obligations of persons outside the agency; and

''(B) does not include—

''(i) a rule that involves the internal revenue laws of the United States, or the assessment and collection of taxes, duties, or other revenues or receipts;

''(ii) a rule or agency action that implements an international trade agreement to which the United States is a party;

''(iii) a rule or agency action that authorizes the introduction into commerce, or recognizes the marketable status, of a product;

''(iv) a rule exempt from notice and public procedure under section 553(a);

''(v) a rule or agency action relating to the public debt;

''(vi) a rule required to be promulgated at least annually pursuant to statute, or that provides relief, in whole or in part, from a statutory prohibition, other than a rule promulgated pursuant to subtitle C of title II of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.);

''(vii) a rule of particular applicability that approves or prescribes the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

''(viii) a rule relating to monetary policy or to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k))), credit unions, Federal Home Loan Banks, government sponsored housing enterprises, farm credit institutions, foreign banks that operate in the United States and their affiliates, branches, agencies, commercial lending companies, or representative offices, (as those terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101));

''(ix) a rule relating to the payment system or the protection of deposit insurance funds or the farm credit insurance fund;

''(x) any order issued in a rate or certificate proceeding by the Federal Energy Regulatory Commission, or a rule of general applicability that the Federal Energy Regulatory Commission certifies would increase reliance on competitive market forces or reduce regulatory burdens;

''(xi) a rule or order relating to the financial responsibility of brokers and dealers or futures commission merchants, the safeguarding of investor securities and funds or commodity future or options customer securities and funds, the clearance and settlement of securities, futures, or options transactions, or the suspension of trading under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or emergency action taken under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or a rule relating to the protection of the Securities Investor Protection Corporation, that is promulgated under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); or

''(xii) a rule that involves the international trade laws of the United States.

''§ 622. Rulemaking cost-benefit analysis

''(a) DETERMINATIONS FOR MAJOR RULE.—Prior to publishing a notice of proposed rulemaking for any rule (or, in the case of a notice of proposed rulemaking that has been published but not issued as a final rule on or before the date of enactment of this subchapter, not later than 30 days after such date of enactment), each agency shall determine—

''(1) whether the rule is or is not a major rule within the meaning of section 621(5)(A)(i) and, if it is not, whether it should be designated as a major rule under section 621(5)(B); and

''(2) if the agency determines that the rule is a major rule, or otherwise designates it as a major rule, whether the rule requires or does not require the preparation of a risk assessment under section 632(a).

''(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A) and has not designated the rule as a major rule within the meaning of section 621(5)(B), the Director or a designee of the President may, as appropriate, determine that the rule is a major rule or designate the rule as a major rule not later than 30 days after the publication of the notice of proposed rulemaking for the rule (or, in the case of a notice of proposed rulemaking that has been published on or before the date of enactment of this subchapter, not later than 1 year after such date of enactment).

''(2) Such determination or designation shall be published in the Federal Register, together with a succinct statement of the basis for the determination or designation.

''(c) INITIAL COST-BENEFIT ANALYSIS.—(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

''(B)(i) When an agency, the Director, or a designee of the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

''(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment in the same manner as if the initial cost-benefit analysis had been issued with the notice of proposed rulemaking.

''(2) Each initial cost-benefit analysis shall contain—

''(A) a succinct analysis of the benefits of the proposed rule, including any beneficial

effects that cannot be quantified, and an explanation of how the agency anticipates such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

''(B) a succinct analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

''(C) a succinct description (including an analysis of the costs and benefits) of reasonable alternatives for achieving the objectives of the statute, including, where such alternatives exist, alternatives that—

''(i) require no government action, where the agency has discretion under the statute granting the rulemaking authority not to promulgate a rule;

''(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply;

''(iii) employ performance-based standards, market-based mechanisms, or other flexible regulatory options that permit the greatest flexibility in achieving the regulatory result that the statutory provision authorizing the rule is designed to produce; or

''(iv) employ voluntary standards;

''(D) in any case in which the proposed rule is based on one or more scientific evaluations, scientific information, or a risk assessment, or is subject to the risk assessment requirements of subchapter III, a description of the actions undertaken by the agency to verify the quality, reliability, and relevance of such scientific evaluation, scientific information, or risk assessment; and

''(E) an explanation of how the proposed rule is likely to meet the decisional criteria of section 624.

''(d) FINAL COST-BENEFIT ANALYSIS.—(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

''(2) Each final cost-benefit analysis shall contain—

''(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking record, including flexible regulatory options of the type described in subsection (c)(2)(C)(iii), and a description of the persons likely to receive such benefits and bear such costs; and

''(B) an analysis, based upon the rulemaking record considered as a whole, of how the rule meets the decisional criteria in section 624.

''(3) In considering the benefits and costs, the agency, when appropriate, shall consider the benefits and costs incurred by all of the affected persons or classes of persons (including specially affected subgroups).

''(e) REQUIREMENTS FOR COST-BENEFIT ANALYSES.—(1)(A) The description of the benefits and costs of a proposed and a final rule required under this section shall include, to the extent feasible, a quantification or numerical estimate of the quantifiable benefits and costs.

''(B) The quantification or numerical estimate shall—

''(i) be made in the most appropriate unit of measurement, using comparable assumptions, including time periods;

''(ii) specify the ranges of predictions; and

''(iii) explain the margins of error involved in the quantification methods and the uncertainties and variabilities in the estimates used.

''(C) An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a final rule pursuant to this section in as precise and succinct a manner as possible.

''(D) The agency evaluation of the relationship of benefits to costs shall be clearly articulated.

''(E) An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

''(F) Nothing in this subsection shall be construed to expand agency authority beyond the delegated authority arising from the statute granting the rulemaking authority.

''(2) Where practicable and when understanding industry-by-industry effects is of central importance to a rulemaking, the description of the benefits and costs of a proposed and final rule required under this section shall describe such benefits and costs on an industry by industry basis.

''(f) HEALTH, SAFETY, OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) A major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources; and

''(B) the agency publishes in the Federal Register, together with such finding, a succinct statement of the basis for the finding.

''(2) Not later than 180 days after the promulgation of a final major rule to which this section applies, the agency shall comply with the provisions of this subchapter and, as thereafter necessary, revise the rule.

''§ 623. Agency regulatory review

''(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

''(2) In selecting rules for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

''(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) a rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

''(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii).

''(3) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(4) Any interpretive rule, general statement of policy, or guidance that has the force and effect of a rule under section 621(9) shall be treated as a rule for purposes of this section.

''(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), and subject to subsection (c), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

''(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (d) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) The schedule shall contain, at a minimum, all rules listed on the preliminary schedule.

''(4) The head of the agency shall modify the agency's schedule under this section to reflect any change ordered by the court under subsection (e) or subsection (g)(3) or contained in an appropriations Act under subsection (f).

''(c) PETITIONS AND COMMENTS PROPOSING ADDITION OF RULES TO THE SCHEDULE.—(1) Notwithstanding section 553(*l*), a petition to amend or repeal a major rule or an interpretative rule, general statement of policy, or guidance on grounds arising under this subchapter may only be filed during the 180-day comment period under subsection (a) and not at any other time. Such petition shall be reviewed only in accordance with this subsection.

''(2) The head of the agency shall, in response to petitions received during the rulemaking to establish the schedule, place on the final schedule for the completion of review within the first 3 years of the schedule any rule for which a petition, on its face, together with any relevant comments received in the rulemaking under subsection (a), establishes that there is a substantial likelihood that, considering the future impact of the rule—

''(A) the rule is a major rule under section 621(5)(A); and

(B) the head of the agency would not be able to make the findings required by section 624 with respect to the rule.

''(3) For the purposes of paragraph (2), the head of the agency may consolidate multiple petitions on the same rule into 1 determination with respect to review of the rule.

''(4) The head of the agency may, at the sole discretion of the head of the agency, add to the schedule any other rule suggested by a commentator during the rulemaking under subsection (a).

''(d) CRITERIA FOR ESTABLISHING DEADLINES FOR REVIEW.—The schedules in subsections (a) and (b) shall establish deadlines for review of each rule on the schedule that take into account—

''(1) the extent to which, for a particular rule, the preliminary views of the agency are that—

''(A) the rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) the rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

''(C) the rule could be revised in a manner allowed by the statute authorizing the rule so as to meet the decisional criteria under section 624 and to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

''(2) the importance of each rule relative to other rules being reviewed under this section; and

''(3) the resources expected to be available to the agency under subsection (f) to carry out the reviews under this section.

''(e) JUDICIAL REVIEW.—(1) Notwithstanding section 625 and except as provided otherwise in this subsection, agency compliance or noncompliance with the requirements of this section shall be subject to judicial review in accordance with section 706 of this title.

''(2) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review agency action pursuant to subsections (a), (b), and (c).

''(3) A petition for review of final agency action under subsection (b) or subsection (c) shall be filed not later than 60 days after the agency publishes the final rule under subsection (b).

''(4) The court upon review, for good cause shown, may extend the 3-year deadline under subsection (c)(2) for a period not to exceed 1 additional year.

''(5) The court shall remand to the agency any schedule under subsection (b) only if final agency action under subsection (b) is arbitrary or capricious. Agency action under subsection (d) shall not be subject to judicial review.

''(f) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

''(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

''(B) include a list of rules which may terminate during the year for which the budget proposal is made.

''(2) Amendments to the schedule under subsection (b) that change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may submit, to the House of Representatives or Senate appropriations committee (as the case may be), amendments to the schedule published by an agency under subsection (b) that change a deadline for review of a rule. The appropriations committee to which such amendments have been submitted shall include or propose the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

''(g) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

''(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

''(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

''(i) addresses public comments generated by the notice in subparagraph (A);

''(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether it satisfies the decisional criteria of section 624;

''(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

''(iv) solicits public comment on the preliminary determination for the rule; and

''(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

''(i) addresses public comments generated by the notice in subparagraph (B); and

''(ii) contains a final determination of whether to continue, amend, or repeal the rule; and

''(iii) if the agency determines to continue the rule and the rule is a major rule, contains findings necessary to satisfy the decisional criteria of section 624; and

''(iv) if the agency determines to amend the rule, contains a notice of proposed rulemaking under section 553.

''(2) If the final determination of the agency is to continue or repeal the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

''(3) An interested party may petition the U.S. Court of Appeals for the District of Columbia Circuit to extend the period for review of a rule on the schedule for up to two years and to grant such equitable relief as is appropriate, if such petition establishes that—

''(A) the rule is likely to terminate under subsection (i);

''(B) the agency needs additional time to complete the review under this subsection;

''(C) terminating the rule would not be in the public interest; and

''(D) the agency has not expeditiously completed its review.

''(h) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend a major rule under subsection (g)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (g)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

''(i) TERMINATION OF RULES.—If the head of an agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) and subsection (c), the head of the agency shall not enforce the rule, and the rule shall terminate by operation of law as of such date.

''(j) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue or repeal a major rule under subsection (g)(1)(C) shall be considered final agency action.

''(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (h) by the date established under such subsection shall be considered final agency action.

''§ 624. Decisional criteria

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(4) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

''(2)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, and the agency head provides an explanation of those consideration, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(3) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(d) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.

''§ 625. Jurisdiction and judicial review

''(a) REVIEW.—Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall be subject to judicial review only in accordance with this section.

''(b) JURISDICTION.—(1) Except as provided in subsection (e), subject to paragraph (2), each court with jurisdiction under a statute to review final agency action to which this title applies, has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III.

''(2) Except as provided in subsection (e), no claims of noncompliance with this subchapter or subchapter III shall be reviewed separate or apart from judicial review of the final agency action to which they relate.

''(c) RECORD.—Any analysis or review required under this subchapter or subchapter III shall constitute part of the rulemaking record of the final agency action to which it pertains for the purposes of judicial review.

''(d) STANDARDS FOR REVIEW.—In any proceeding involving judicial review under section 706 or under the statute granting the rulemaking authority, failure to comply

with this subchapter or subchapter III may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise provided by law).

''(e) INTERLOCUTORY REVIEW.—(1) The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review—

''(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

''(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

''(2) A petition for review of agency action under paragraph (1) shall be filed within 60 days after the agency makes the determination or certification for which review is sought.

''(3) Except as provided in this subsection, no court shall have jurisdiction to review any agency determination or certification specified in paragraph (1).

''§ 626. Deadlines for rulemaking

''(a) STATUTORY.—All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(b) COURT-ORDERED.—All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(c) OBLIGATION TO REGULATE.—In any case in which the failure to promulgate a rule by a deadline occurring during the 5-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''§ 627. Special rule

''Notwithstanding any other provision of the Comprehensive Regulatory Reform Act of 1995, or the amendments made by such Act, for purposes of this subchapter and subchapter IV, the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), the National Credit Union Administration, the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the Farm Credit Administration, shall have authority with respect to such agency that otherwise would be provided under such subchapters to the Director, a designee of the President, Vice President, or any officer designated or delegated with authority under such subchapters.

''§ 628. Requirements for major environmental management activities

''(a) DEFINITION.—For purposes of this section, the term 'major environmental management activity' means—

''(1) a corrective action requirement under the Solid Waste Disposal Act;

''(2) a response action or damage assessment under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(3) the treatment, storage, or disposal of radioactive or mixed waste in connection with site restoration activity; and

''(4) Federal guidelines for the conduct of such activity, including site-specific guidelines,

the expected costs, expenses, and damages of which are likely to exceed, in the aggregate, $10,000,000.

''(b) APPLICABILITY.—A major environmental management activity is subject to this section unless construction has commenced on a significant portion of the activity, and—

''(1) it is more cost-effective to complete construction of the work than to apply the provisions of this subchapter; or

''(2) the application of the provisions of this subchapter, including any delays caused thereby, will result in an actual and immediate risk to human health or welfare.

''(c) REQUIREMENT TO PREPARE RISK ASSESSMENT.—(1) For each major environmental management activity or significant unit thereof that is proposed by the agency after the date of enactment of this subchapter, is pending on the date of enactment of this subchapter, or is subject to a granted petition for review pursuant to section 623, the head of an agency shall prepare—

''(A) a risk assessment in accordance with subchapter III; and

''(B) a cost-benefit analysis equivalent to that which would be required under this subchapter, if such subchapter were applicable.

''(2) In conducting a risk assessment or cost-benefit analysis under this section, the head of the agency shall incorporate the reasonably anticipated probable future use of the land and its surroundings (and any associated media and resources of either) affected by the environmental management activity.

''(3) For actions pending on the date of enactment of this section or proposed during the year following the date of enactment of this section, in lieu of preparing a risk assessment in accordance with subchapter III or cost-benefit analysis under this subchapter, an agency may use other appropriately developed analyses that allow it to make the judgments required under subsection (d).

''(d) REQUIREMENT.—The requirements of this subsection shall supplement, and not supersede, any other requirement provided by any law. A major environmental management activity under this section shall meet the decisional criteria under section 624 as if it is a major rule under such section.

''§ 629. Petition for alternative method of compliance

''(a) Except as provided in subsection (e), or unless prohibited by the statute authorizing the rule, any person subject to a major rule may petition the relevant agency to modify or waive the specific requirements of the major rule (or any portion thereof) and to authorize such person to demonstrate compliance through alternative means not otherwise permitted by the major rule. The petition shall identify with reasonable specificity the requirements for which the waiver is sought and the alternative means of compliance being proposed.

''(b) The agency shall grant the petition if the petition shows that there is a reasonable likelihood that the proposed alternative means of compliance—

''(1) would achieve the identified benefits of the major rule with at least an equivalent level of protection of health, safety, and the environment as would be provided by the major rule; and

''(2) would not impose an undue burden on the agency that would be responsible for enforcing such alternative means of compliance.

''(c) A decision to grant or to deny a petition under this subsection shall be made not later than 180 days after the petition is submitted, but in no event shall agency action taken pursuant to this section be subject to judicial review.

''(d) Following a decision to grant or deny a petition under this section, no further petition for such rule, submitted by the same person, shall be granted unless such petition pertains to a different facility or installation owned or operated by such person or unless such petition is based on a significant change in a fact, circumstance, or provision of law underlying or otherwise related to the rule occurring since the initial petition was granted or denied, that warrants the granting of such petition.

''(e) If the statute authorizing the rule which is the subject of the petition provides procedures or standards for an alternative method of compliance the petition shall be reviewed solely under the terms of the statute.

''SUBCHAPTER III—RISK ASSESSMENTS

''§ 631. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'exposure assessment' means the scientific determination of the intensity, frequency and duration of actual or potential exposures to the hazard in question;

''(3) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

''(4) the term 'major rule' has the meaning given such term in section 621(5);

''(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

''(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

''(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper bounds as appropriate, that permits the manager to eliminate risks from further consideration and analysis, or to help establish priorities for agency action; and

''(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

''§ 632. Applicability

''(a) IN GENERAL.—Except as provided in subsection (c), for each proposed and final major rule, a primary purpose of which is to protect human health, safety, or the environment, or a consequence of which is a substantial substitution risk, that is proposed by an agency after the date of enactment of this subchapter, or is pending on the date of enactment of this subchapter, the head of each agency shall prepare a risk assessment in accordance with this subchapter.

''(b) APPLICATION OF PRINCIPLES.—(1) Except as provided in subsection (c), the head of each agency shall apply the principles in this subchapter to any risk assessment conducted to support a determination by the agency of risk to human health, safety, or the environment, if such determination would be likely to have an effect on the United States economy equivalent to that of a major rule.

''(2) In applying the principles of this subchapter to risk assessments other than those in subsections (a), (b)(1), and (c), the head of each agency shall publish, after notice and public comment, guidelines for the conduct of such other risk assessments that adapt the principles of this subchapter in a manner consistent with section 633(a)(4) and the risk assessment and risk management needs of the agency.

''(3) An agency shall not, as a condition for the issuance or modification of a permit, conduct, or require any person to conduct, a risk assessment, except if the agency finds that the risk assessment meets the requirements of section 633 (a) through (f).

''(c) EXCEPTIONS.—(1) This subchapter shall not apply to risk assessments performed with respect to—

''(A) a situation for which the agency finds good cause that conducting a risk assessment is impracticable due to an emergency or health and safety threat that is likely to result in significant harm to the public or natural resources;

''(B) a rule or agency action that authorizes the introduction into commerce, or initiation of manufacture, of a substance, mixture, or product, or recognizes the marketable status of a product;

''(C) a human health, safety, or environmental inspection, an action enforcing a statutory provision, rule, or permit, or an individual facility or site permitting action, except to the extent provided by subsection (b)(3);

''(D) a screening analysis clearly identified as such; or

''(E) product registrations, reregistrations, tolerance settings, and reviews of premanufacture notices under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

''(2) An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(D) if the result of the analysis is used—

''(A) as the basis for imposing a restriction on a previously authorized substance, product, or activity after its initial introduction into manufacture or commerce; or

''(B) as the basis for a formal determination by the agency of significant risk from a substance or activity.

''(3) This subchapter shall not apply to any food, drug, or other product label or labeling, or to any risk characterization appearing on any such label.

''§ 633. Principles for risk assessments

''(a) IN GENERAL.—(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

''(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

''(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

''(4) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor considered by the agency as appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

''(5) An agency shall not be required to repeat discussions or explanations in each risk assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that was prepared consistent with this section.

''(b) ITERATIVE PROCESS.—(1) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

''(2) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk and the resulting agency action.

''(c) DATA QUALITY.—(1) The head of each agency shall base each risk assessment only on the best reasonably available scientific data and scientific understanding, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions that are reasonably expected to be encountered.

''(2) The agency shall select data for use in a risk assessment based on a reasoned analysis of the quality and relevance of the data, and shall describe such analysis.

''(3) In making its selection of data, the agency shall consider whether the data were published in the peer-reviewed scientific literature, or developed in accordance with good laboratory practice or published or other appropriate protocols to ensure data quality, such as the standards for the development of test data promulgated pursuant to section 4 of the Toxic Substances Control Act (15 U.S.C. 2603), and the standards for data requirements promulgated pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a), or other form of independent evaluation.

''(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered by the agency in the analysis under paragraph (2).

''(5) When conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information including the likelihood of alternative interpretations of the data and emphasizing—

''(A) postulates that represent the most reasonable inferences from the supporting scientific data; and

''(B) when a risk assessment involves an extrapolation from toxicological studies, data with the greatest scientific basis of support for the resulting harm to affected individuals, populations, or resources.

''(6) The head of an agency shall not automatically incorporate or adopt any recommendation or classification made by any foreign government, the United Nations, any international governmental body or standards-making organization, concerning the health effects value of a substance, except as provided in paragraph (2) of this subsection. Nothing in this paragraph shall be construed to affect the implementation or application of any treaty or international trade agreement to which the United States is a party.

''(d) USE OF POLICY JUDGMENTS.—(1) An agency shall not use policy judgments, including default assumptions, inferences, models or safety factors, when relevant and adequate scientific data and scientific understanding, including site-specific data, are available. The agency shall modify or decrease the use of policy judgments to the extent that higher quality scientific data and understanding become available.

''(2) When a risk assessment involves choice of a policy judgment, the head of the agency shall—

''(A) identify the policy judgment and its scientific or policy basis, including the extent to which the policy judgment has been validated by, or conflicts with, empirical data;

''(B) explain the basis for any choices among policy judgments; and

''(C) describe reasonable alternative policy judgments that were not selected by the agency for use in the risk assessment, and the sensitivity of the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

''(3) An agency shall not inappropriately combine or compound multiple policy judgments.

''(4) The agency shall, subject to notice and opportunity for public comment, develop and publish guidelines describing the agency's default policy judgments and how they were chosen, and guidelines for deciding when and how, in a specific risk assessment, to adopt alternative policy judgments or to use available scientific information in place of a policy judgment.

''(e) RISK CHARACTERIZATION.—In each risk assessment, the agency shall include in the risk characterization, as appropriate, each of the following:

''(1) A description of the hazard of concern.

''(2) A description of the populations or natural resources that are the subject of the risk assessment.

''(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

''(4) A description of the nature and severity of the harm that could plausibly occur.

''(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

''(f) PRESENTATION OF RISK ASSESSMENT CONCLUSIONS.—(1) To the extent feasible and scientifically appropriate, the head of an agency shall—

''(A) express the overall estimate of risk as a range or probability distribution that reflects variabilities, uncertainties and data gaps in the analysis;

''(B) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the reasonably expected risk to the general population and, where appropriate, to more highly exposed or sensitive subpopulations; and

''(C) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

''(2) When scientific data and understanding that permits relevant comparisons of risk are reasonably available, the agency shall use such information to place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context.

''(3) When scientifically appropriate information on significant substitution risks to human health, safety, or the environment is reasonably available to the agency, or is contained in information provided to the agency by a commentator, the agency shall describe such risks in the risk assessments.

''(g) PEER REVIEW.—(1) Each agency shall provide for peer review in accordance with this section of any risk assessment subject

to the requirements of this subchapter that forms that basis of any major rule or a major environmental management activity.

''(2) Each agency shall develop a systematic program for balanced, independent, and external peer review that—

''(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other formal or informal devices that are balanced and comprised of participants selected on the basis of their expertise relevant to the sciences involved in regulatory decisions and who are independent of the agency program that developed the risk assessment being reviewed;

''(B) shall not exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential interest in the outcome, if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person;

''(C) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and agency response to all significant peer review comments; and

''(D) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

''(3) Each peer review shall include a report to the Federal agency concerned detailing the scientific and technical merit of data and the methods used for the risk assessment, and shall identify significant peer review comments. Each agency shall provide a written response to all significant peer review comments. All peer review comments, conclusions, composition of the panels, and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

''(4)(A) The Director of the Office of Science and Technology Policy shall develop a systematic program to oversee the use and quality of peer review of risk assessments.

''(B) The Director or the designee of the President may order an agency to conduct peer review for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions, or that would establish an important precedent.

''(5) The proceedings of peer review panels under this section shall not be subject to the Federal Advisory Committee Act.

''(h) PUBLIC PARTICIPATION.—The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

''§ 634. Petition for review of a major free-standing risk assessment

''(a) Any interested person may petition an agency to conduct a scientific review of a risk assessment conducted or adopted by the agency, except for a risk assessment used as the basis for a major rule or a site-specific risk assessment.

''(b) The agency shall utilize external peer review, as appropriate, to evaluate the claims and analyses in the petition, and shall consider such review in making its determination of whether to grant the petition.

''(c) The agency shall grant the petition if the petition establishes that there is a reasonable likelihood that—

''(1)(A) the risk assessment that is the subject of the petition was carried out in a manner substantially inconsistent with the principles in section 633; or

''(B) the risk assessment that is the subject of the petition does not take into account material significant new scientific data and scientific understanding;

''(2) the risk assessment that is the subject of the petition contains significantly different results than if it had been properly conducted pursuant to subchapter III; and

''(3) a revised risk assessment will provide the basis for reevaluating an agency determination of risk, and such determination currently has an effect on the United States economy equivalent to that of major rule.

''(d) A decision to grant, or final action to deny, a petition under this subsection shall be made not later than 180 days after the petition is submitted.

''(e) If the agency grants the petition, it shall complete its review of the risk assessment not later than 1 year after its decision to grant the petition. If the agency revises the risk assessment, in response to its review, it shall do so in accordance with section 633.

''§ 635. Comprehensive risk reduction

''(a) SETTING PRIORITIES.—The head of each agency with programs to protect human health, safety, or the environment shall set priorities for the use of resources available to address those risks to human health, safety, and the environment, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

''(b) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each agency in subsection (a) shall incorporate the priorities identified under subsection (a) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner using the priorities set under subsection (a), the basis for that determination, and explicitly identify how the agency's requested budget and regulatory agenda reflect those priorities.

''(c) REPORTS BY THE NATIONAL ACADEMY OF SCIENCES.—(1) Not later than 6 months after the date of enactment of this section, the Director of the Office of Science and Technology Policy shall enter into an arrangement with the National Academy of Sciences to investigate and report on comparative risk analysis. The arrangement shall provide, to the extent feasible, for—

''(A) 1 or more reports evaluating methods of comparative risk analysis that would be appropriate for agency programs related to human health, safety, and the environment to use in setting priorities for activities; and

''(B) a report providing a comprehensive and comparative analysis of the risks to human health, safety, and the environment that are addressed by agency programs to protect human health, safety, and the environment, along with companion activities to disseminate the conclusions of the report to the public.

''(2) The report or reports prepared under paragraph (1)(A) shall be completed not later than 3 years after the date of enactment of this section. The report under paragraph (1)(B) shall be completed not later than 4 years after the date of enactment of this section, and shall draw, as appropriate, upon the insights and conclusions of the report or reports made under paragraph (1)(A). The companion activities under paragraph (1)(B) shall be completed not later than 5 years after the date of enactment of this section.

''(3)(A) The head of an agency with programs to protect human health, safety, and the environment shall incorporate the recommendations of reports under paragraph (1) in revising any priorities under subsection (a).

''(B) The head of the agency shall submit a report to the appropriate Congressional committees of jurisdiction responding to the recommendations from the National Academy of Sciences and describing plans for utilizing the results of comparative risk analysis in agency budget, strategic planning, regulatory agenda, enforcement, and research and development activities.

''(4) Following the submission of the report in paragraph (2), for the next 5 years, the head of the agency shall submit, with the budget request submitted to Congress under section 1105(a) of title 31, a description of how the requested budget of the agency and the strategic planning activities of the agency reflect priorities determined using the recommendations of reports issued under subsection (a). The head of the agency shall include in such description—

''(A) recommendations on the modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

''(B) recommendation on the modification or elimination of statutory or judicially mandated deadlines,

that would assist the head of the agency to set priorities in activities to address the risks to human health, safety, or the environment that incorporate the priorities developed using the recommendations of the reports under subsection (a), resulting in more cost-effective programs to address risk.

''(5) For each budget request submitted in accordance with paragraph (4), the Director shall submit an analysis of ways in which resources could be reallocated among Federal agencies to achieve the greatest overall net reduction in risk.

''§ 636. Rule of construction

''Nothing in this subchapter shall be construed to—

''(1) preclude the consideration of any data or the calculation of any estimate to more fully describe or analyze risk, scientific uncertainty, or variability; or

''(2) require the disclosure of any trade secret or other confidential information.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''§ 641. Procedures

''(a) IN GENERAL.—The Director or a designee of the President shall—

''(1) establish and, as appropriate, revise procedures for agency compliance with this chapter; and

''(2) monitor, review, and ensure agency implementation of such procedures.

''(b) PUBLIC COMMENT.—Procedures established pursuant to subsection (a) shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

''(c) TIME FOR REVIEW.—(1) If procedures established pursuant to subsection (a) include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, or a designee of the President.

''(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President.

''(3)(A) The times for each such review may be extended for good cause by the President or by an officer to whom the President has delegated his authority pursuant to section 642 for an additional 45 days. At the request

of the head of an agency, the President or such an officer may grant an additional extension of 45 days.

''(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

''§ 642. Delegation of authority

''(a) IN GENERAL.—The President may delegate the authority granted by this subchapter to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

''(b) NOTICE.—Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

''§ 643. Judicial review

''The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 642 and agency compliance or noncompliance with the procedure under section 641 shall not be subject to judicial review.

''§ 644. Regulatory agenda

''The head of each agency shall provide, as part of the semiannual regulatory agenda published under section 602—

''(1) a list of risk assessments subject to subsection 632 (a) or (b)(1) under preparation or planned by the agency;

''(2) a brief summary of relevant issues addressed or to be addressed by each listed risk assessment;

''(3) an approximate schedule for completing each listed risk assessment;

''(4) an identification of potential rules, guidance, or other agency actions supported or affected by each listed risk assessment; and

''(5) the name, address, and telephone number of an agency official knowledgeable about each listed risk assessment.''.

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

''(c)(1) Except as provided in paragraph (2), no final rule for which a final regulatory flexibility analysis is required under this section shall be promulgated unless the agency finds that the final rule minimizes significant economic impact on small entities to the maximum extent possible, consistent with the purposes of this subchapter, the objectives of the rule, and the requirements of applicable statutes.

''(2) If an agency determines that a statute requires a rule to be promulgated that does not satisfy the criterion of paragraph (1), the agency shall—

''(A) include a written explanation of such determination in the final regulatory flexibility analysis; and

''(B) transmit the final regulatory flexibility analysis to Congress when the final rule is promulgated.''.

(2) JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

''§ 611. Judicial review

''(a)(1) For any rule described in section 603(a), and with respect to which the agency—

''(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities;

''(B) prepared a final regulatory flexibility analysis pursuant to section 604; or

''(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

''(2)(A) Notwithstanding any other provision of law, an affected small entity shall have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such rule.

''(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year after the date the analysis is made available to the public.

''(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be subject to the provisions of, or otherwise required to comply with, the final rule.

''(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

''(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of section 604.

''(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

''(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

''(A) to prepare the analysis required by section 604; or

''(B) to take corrective action consistent with section 604.

''(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

''(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.''.

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO TESTING.—In applying section 409(c)(3)(A), 512(d)(1), or 721(b)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A), 360b(d)(1), 379e(b)(5)(B)), the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency shall not prohibit or refuse to approve a substance or product on the basis of safety, where the substance or product presents a negligible or insignificant foreseeable risk to human health resulting from its intended use.

(d) TOXIC RELEASE INVENTORY REVIEW.—Section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)) is amended—

(1) in paragraph (2) by inserting after ''epidemiological or other population studies,'' the following: ''and on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases''; and

(2) in subsection (e)(1), by inserting before ''Within 180 days'' the following: ''The Administrator shall grant any petition that establishes substantial evidence that the criteria in subparagraph (A) either are or are not met.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following:

''CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

''SUBCHAPTER I—REGULATORY ANALYSIS

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''SUBCHAPTER III—RISK ASSESSMENTS

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

SEC. 5. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is amended—

(1) by striking section 706; and

(2) by adding at the end the following new sections:

''§ 706. Scope of review

''(a) To the extent necessary to reach a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

''(1) compel agency action unlawfully withheld or unreasonably delayed; and

''(2) hold unlawful and set aside agency action, findings and conclusions found to be—

''(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

''(B) contrary to constitutional right, power, privilege, or immunity;

''(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

''(D) without observance of procedure required by law;

''(E) unsupported by substantial evidence in a proceeding subject to sections 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute;

''(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or

''(G) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

''(b) In making the determinations set forth in subsection (a), the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

''§ 707. Consent decrees

''In interpreting any consent decree in effect on or after the date of enactment of this section that imposes on an agency an obligation to initiate, continue, or complete rulemaking proceedings, the court shall not enforce the decree in a way that divests the agency of discretion clearly granted to the agency by statute to respond to changing circumstances, make policy or managerial choices, or protect the rights of third parties.

''§ 708. Affirmative defense

''Notwithstanding any other provision of law, it shall be an affirmative defense in any enforcement action brought by an agency that the regulated person or entity reasonably relied on and is complying with a rule, regulation, adjudication, directive, or order of such agency or any other agency that is incompatible, contradictory, or otherwise cannot be reconciled with the agency rule, regulation, adjudication, directive, or order being enforced.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 7 of title 5, United States Code, is amended by striking the item relating to section 706 and inserting the following new items:

''706. Scope of review.
''707. Consent decrees.
''708. Affirmative defense.''.

SEC. 6. CONGRESSIONAL REVIEW.

(a) FINDING.—The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the implementation of certain significant final rules is imposed in order to provide Congress an opportunity for review.

(b) IN GENERAL.—Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

''CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

''801. Congressional review.
''802. Congressional disapproval procedure.
''803. Special rule on statutory, regulatory, and judicial deadlines.
''804. Definitions.
''805. Judicial review.
''806. Applicability; severability.
''807. Exemption for monetary policy.

''§ 801. Congressional review

''(a)(1)(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

''(i) a copy of the rule;

''(ii) a concise general statement relating to the rule; and

''(iii) the proposed effective date of the rule.

''(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

''(i) a complete copy of the cost-benefit analysis of the rule, if any;

''(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

''(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

''(iv) any other relevant information or requirements under any other Act and any relevant Executive orders, such as Executive Order No. 12866.

''(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

''(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

''(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

''(3) A major rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

''(A) the later of the date occurring 60 days after the date on which—

''(i) the Congress receives the report submitted under paragraph (1); or

''(ii) the rule is published in the Federal Register;

''(B) if the Congress passes a joint resolution of disapproval described under section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

''(i) on which either House of Congress votes and fails to override the veto of the President; or

''(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

''(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

''(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

''(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

''(b) A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 802.

''(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this chapter may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

''(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

''(A) necessary because of an imminent threat to health or safety or other emergency;

''(B) necessary for the enforcement of criminal laws;

''(C) necessary for national security; or

''(D) issued pursuant to a statute implementing an international trade agreement.

''(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

''(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 802 shall apply to such rule in the succeeding Congress.

''(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

''(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

''(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a final rule can take effect.

''(3) A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

''(e)(1) Section 802 shall apply in accordance with this subsection to any major rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which the Comprehensive Regulatory Reform Act of 1995 takes effect.

''(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

''(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of enactment of the Comprehensive Regulatory Reform Act of 1995; and

''(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

''(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

''(g) If the Congress does not enact a joint resolution of disapproval under section 802, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

''§ 802. Congressional disapproval procedure

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 801(a) is received by Congress and ending 60 days thereafter, the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ___ relating to ___, and such rule

shall have no force or effect.'. (The blank spaces being appropriately filled in.)

''(b)(1) A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

''(2) For purposes of this subsection the term 'submission or publication date' means the later of the date on which—

''(A) the Congress receives the report submitted under section 801(a)(1); or

''(B) the rule is published in the Federal Register.

''(c) If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d)(1) When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(1) The resolution of the other House shall not be referred to a committee.

''(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(B) the vote on final passage shall be on the resolution of the other House.

''(f) This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''§ 803. Special rule on statutory, regulatory, and judicial deadlines

''(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

''(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

''§ 804. Definitions

''(a) For purposes of this chapter—

''(1) the term 'Federal agency' means any agency as that term is defined in section 551(1) (relating to administrative procedure);

''(2) the term 'major rule' has the same meaning given such term in section 621(5); and

''(3) the term 'final rule' means any final rule or interim final rule.

''(b) As used in subsection (a)(3), the term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

''§ 805. Judicial review

''No determination, finding, action, or omission under this chapter shall be subject to judicial review.

''§ 806. Applicability; severability

''(a) This chapter shall apply notwithstanding any other provision of law.

''(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

''§ 807. Exemption for monetary policy

''Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

(d) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

''8. Congressional Review of Agency Rulemaking ..... 801''.

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) MAJOR RULE.—The term ''major rule'' has the same meaning as defined in section 621(5)(A)(i) of title 5, United States Code. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States or a statute implementing an international trade agreement; or

(C) regulations related to agency organization, management, or personnel.

(2) AGENCY.—The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Not later than June 1, 1997, and each June 1 thereafter, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of major rules and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection not later than 2 years after the date of enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the date of enactment of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of major rules by setting

forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for major rules, grouped by regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government administrative costs.

(C) An accounting statement shall estimate the benefits of major rules by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) Analyses prepared by the President of the cumulative impact of major rules in Federal regulatory programs covered in the accounting statement on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to sections 3 and 7 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 4 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—Not later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of the Administrative Procedure Act (as amended by section 3 of this Act); and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

(b) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SPECTER AMENDMENT NO. 1556

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 2, insert between lines 3 and 4 the following:

(2) in paragraph (1) by inserting ''(including the President)'' after ''Government of the United States'';

HATCH AMENDMENTS NOS. 1557–1558

(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1557

At page 37, strike lines 9–18 (Sec. 624(c)(2)(B)) and insert the following in lieu thereof:

(b)(3)(B) if scientific, technical, or economic uncertainties or benefits to health, safety, or the environment identified by the agency in the rulemaking record makes a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or *adopts the greater net benefits of the type that achieves the objectives of the statute for identified benefits to health, safety, or the environment.*

AMENDMENT NO. 1558

At page 36, strike lines 1–10 (Sec. 624(6)(3)(B)) and insert the following:

(b)(3)(B) if scientific, technical, or economic uncertainties or benefits to health, safety, or the environment identified by the agency in the rulemaking record makes a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or *adopts the greater net benefits of the type that achieves the objectives of the statute for identified benefits to health, safety, or the environment.*

GRAHAM AMENDMENTS NOS. 1559–1560

(Ordered to lie on the table.)

Mr. GRAHAM submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1559

On page 92, line 19, insert ''including, if appropriate, the achievement of any performance-based standards,'' after ''statement,''.

AMENDMENT NO. 1560

On page 7, line 18, insert ''including, if appropriate, any performance-based standards,'' after ''of,''.

DORGAN AMENDMENT NO. 1561

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, insert between lines 20 and 21 the following new section:

SEC. . REPORT BY BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''Board'' means the Board of Governors of the Federal Reserve System; and

(2) the term ''Committee'' means the Federal Open Market Committee established under section 12A of the Federal Reserve Act.

(b) REPORT REQUIRED.—No later than 30 days after the Board or the Committee takes any action to change the discount rate or the Federal funds rate, the Board shall submit a report to the Congress and to the President which shall include a detailed analysis of the projected costs of that action, and the projected costs of any associated changes in market interest rates, during the 5-year period following that action.

(c) CONTENTS.—The report required by subsection (b) shall include an analysis of the costs imposed by such action on—

(1) Federal, State, and local government borrowing, including costs associated with debt service payments; and

(2) private sector borrowing, including costs imposed on—

(A) consumers;

(B) small businesses;

(C) homeowners; and

(D) commercial lenders.

GRASSLEY AMENDMENT NO. 1562

(Ordered to lie on the table.)

Mr. GRASSLEY submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the amendment add the following:

(a) Each final cost benefit analysis shall contain an analysis, to the extent practicable, of the effect of the rule on the cumulative financial burden of compliance with the rule and other related existing regulations on persons complying with it.

BROWN AMENDMENT NO. 1563

(Ordered to lie on the table.)

Mr. BROWN submitted an amendment intended to be proposed by him to the bill S. 343, supra; as follows:

At the appropriate place insert the following:

SEC. 709. Agency interpretations in civil and criminal actions.

(a) In any civil or criminal action to enforce a regulation, and in which the government must prove that the party acted willfully, the factfinder shall consider in making that determination by a federal agency charged with enforcement of the regulation, or a state agency to which enforcement authority has been delegated, that the defendant was in compliance with, was exempt from, or was otherwise not in violation of the rule. The defendant must show:

(1) that he sought advice in good faith;

(2) that he did so prior to taking action;

(3) that he fully and accurately disclosed all material facts to the agency official; and

(4) that he acted in accord with the advice he was given.

(b) In making the determinations necessary in (a), the court shall consider:

(1) the sophistication of the defendant; and

(2) whether the governmental representative had the authority to make the determination.

(c) If the factfinder determines that a rule or agency interpretive material failed to give the defendant fair warning of the conduct the rule prohibits or requires, no civil or criminal penalty shall be imposed.

(d)(1) In any civil or criminal action to enforce a regulation, seeking the retroactive application of a requirement against any person that is based upon—

(A) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition; or

(B) a determination of fact;

if such determination is different from a prior interpretation or determination by the agency, and if such person reasonably relied upon the prior interpretation or determination.

(2) The defendant must show:

(1) that he sought advice in good faith;

(2) that he did so prior to taking action;

(3) that he fully and accurately disclosed all material facts to the agency official; and

(4) that he acted in accord with the advice he was given.

(3) In making the determinations necessary in (d)(2), the court shall consider:

(1) the sophistication of the defendant; and

(2) whether the governmental representative had the authority to make the determination.

(4) This section shall apply to any civil or criminal action initiated on or after the date of enactment of this section.

(e) Nothing in this section shall require any agency to issue advisory opinions or rulings.

GRAMM AMENDMENT NO. 1564

(Ordered to lie on the table.)

Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 343, supra; as follows:

At the appropriate place, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Rights Restoration Act.''.

SEC. 2. PRIVATE PROPERTY RIGHTS RESTORATION.

(a) CAUSE OF ACTION.—(1) The owner of any real property shall have a cause of action against the United States if—

(A) the application of a statute, regulation, rule, guideline, or policy of the United States restricts, limits, or otherwise takes a right to real property that would otherwise exist in the absence of such application; and

(B) such application described under subparagraph (A) would result in a discrete and non-negligible reduction in the fair market value of the affected portion of real property.

(2) Notwithstanding paragraph (1)(B), a prima facie case against the United States shall be established if the Government action described under paragraph (1)(A results in a temporary or permanent diminution of fair market value of the affected portion of real property of the lesser of—

(A) 25 percent or more; or

(B) $10,000 or more.

(b) JURISDICTION.—An action under this Act shall be filed in the United States Court of Federal Claims which shall have exclusive jurisdiction.

(c) RECOVERY.—In any action filed under this Act, the owner may elect to recover—

(1) a sum equal to the diminution in the fair market value of the portion of the property affected by the application of a statute, regulation, rule, guideline, or policy described under subsection (a)(1)(A) and retain title; or

(2) the fair market value of the affected portion of the regulated property prior to the government action and relinquish title to the portion of property regulated.

(d) PUBLIC NUISANCE EXCEPTION.—(1) No compensation shall be required by virtue of this Act if the owner's use or proposed use of the property amounts to a public nuisance as commonly understood and defined by background principles of nuisance and property law, as understood under the law of the State within which the property is situated.

(2) To bar an award of damages under this Act, the United States shall have the burden of proof to establish that the use or proposed use of the property is a public nuisance as defined under paragraph (1) of this subsection.

SEC. 3. APPLICATION; STATUTE OF LIMITATIONS.

(a) APPLICATION.—This Act shall apply to the application of any statute, regulation, rule, guideline, or policy to real property, if such application occurred or occurs on or after January 1, 1994.

(b) STATUTE OF LIMITATIONS.—The statute of limitations for actions brought under this Act shall be six years from the application of any statute, regulation, rule, guideline, or policy of the United States to any affected parcel of property under this Act.

SEC. 4. AWARD OF COSTS; LITIGATION COSTS.

(a) IN GENERAL.—The court, in issuing any final order in any action brought under this Act, shall award costs of litigation (including reasonable attorney and expert witness) to any prevailing plaintiff.

(b) PAYMENT.—All awards or judgments for plaintiff, including recovery for damages and costs of litigation, shall be paid out of funds of the agency or agencies responsible for issuing the statute, regulation, rule, guideline or policy affecting the reduction in the fair market value of the affected portion of property. Payments shall not be made from a judgment fund.

SEC. 5. CONSTITUTIONAL OR STATUTORY RIGHTS NOT RESTRICTED.

Nothing in this Act shall restrict any remedy or any right which any person (or class of persons) may have under any provision of the United States Constitution or any other law.

GRAMM AMENDMENT NO. 1565

(Ordered to lie on the table.)

Mr. GRAMM submitted an amendment intended to be proposed by him to the bill, S. 343, supra; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Omnibus Property Rights Act of 1995''.

TITLE I—FINDINGS AND PURPOSES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the private ownership of property is essential to a free society and is an integral part of the American tradition of liberty and limited government;

(2) the framers of the United States Constitution, in order to protect private property and liberty, devised a framework of Government designed to diffuse power and limit Government;

(3) to further ensure the protection of private property, the fifth amendment to the United States Constitution was ratified to prevent the taking of private property by the Federal Government, except for public use and with just compensation;

(4) the purpose of the takings clause of the fifth amendment of the United States Constitution, as the Supreme Court stated in Armstrong v. United States, 364 U.S. 40, 49 (1960), is ''to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole'';

(5) the Federal Government has singled out property holders to shoulder the cost that should be borne by the public, in violation of the just compensation requirement of the takings clause of the fifth amendment of the United States Constitution;

(6) there is a need both to restrain the Federal Government in its overzealous regulation of the private sector and to protect private property, which is a fundamental right of the American people; and

(7) the incremental, fact-specific approach that courts now are required to employ in the absence of adequate statutory language to vindicate property rights under the fifth amendment of the United States Constitution has been ineffective and costly and there is a need for Congress to clarify the law and provide an effective remedy.

SEC. 102. PURPOSE.

The purpose of this Act is to encourage, support, and promote the private ownership of property by ensuring the constitutional and legal protection of private property by the United States Government by—

(1) the establishment of a new Federal judicial claim in which to vindicate and protect property rights;

(2) the simplification and clarification of court jurisdiction over property right claims;

(3) the establishment of an administrative procedure that requires the Federal Government to assess the impact of government action on holders of private property;

(4) the minimization, to the greatest extent possible, of the taking of private property by the Federal Government and to ensure that just compensation is paid by the Government for any taking; and

(5) the establishment of administrative compensation procedures involving the enforcement of the Endangered Species Act of 1973 and section 404 of the Federal Water Pollution Control Act.

TITLE II—PROPERTY RIGHTS LITIGATION RELIEF

SEC. 201. FINDINGS.

The Congress finds that—

(1) property rights have been abrogated by the application of laws, regulations, and other actions by the Federal Government that adversely affect the value of private property;

(2) certain provisions of sections 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act), that delineate the jurisdiction of courts hearing property rights claims, complicates the ability of a property owner to vindicate a property owner's right to just compensation for a governmental action that has caused a physical or regulatory taking;

(3) current law—

(A) forces a property owner to elect between equitable relief in the district court and monetary relief (the value of the property taken) in the United States Court of Federal Claims;

(B) is used to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims; and

(C) is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should seek equitable relief in district court;

(4) property owners cannot fully vindicate property rights in one court;

(5) property owners should be able to fully recover for a taking of their private property in one court;

(6) certain provisions of section 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act) should be amended, giving both the district courts of the United States and the Court of Federal Claims jurisdiction to hear all claims relating to property rights; and

(7) section 1500 of title 28, United States Code, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and made by the same plaintiff, should be repealed.

SEC. 202. PURPOSES.

The purposes of this title are to—

(1) establish a clear, uniform, and efficient judicial process whereby aggrieved property owners can obtain vindication of property rights guaranteed by the fifth amendment to the United States Constitution and this Act;

(2) amend the Tucker Act, including the repeal of section 1500 of title 28, United States Code;

(3) rectify the constitutional imbalance between the Federal Government and the States; and

(4) require the Federal Government to compensate property owners for the deprivation of property rights that result from State agencies' enforcement of federally mandated programs.

SEC. 203. DEFINITIONS.

For purposes of this title the term—

(1) ''agency'' means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government;

(2) ''agency action'' means any action or decision taken by an agency that—

(A) takes a property right; or

(B) unreasonably impedes the use of property or the exercise of property interests;

(3) ''just compensation''—

(A) means compensation equal to the full extent of a property owner's loss, including the fair market value of the private property taken and business losses arising from a taking, whether the taking is by physical occupation or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the United States tenders payment;

(4) ''owner'' means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(5) ''private property'' or ''property'' means all property protected under the fifth amendment to the Constitution of the United States, any applicable Federal or State law, or this Act, and includes—

(A) real property, whether vested or unvested, including—

(i) estates in fee, life estates, estates for years, or otherwise;

(ii) inchoate interests in real property such as remainders and future interests;

(iii) personalty that is affixed to or appurtenant to real property;

(iv) easements;

(v) leaseholds;

(vi) recorded liens; and

(vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded lines on such water right;

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy;

(D) property rights provided by, or memorialized in, a contract, except that such rights shall not be construed under this title to prevent the United States from prohibiting the formation of contracts deemed to harm the public welfare or to prevent the execution of contracts for—

(i) national security reasons; or

(ii) exigencies that present immediate or reasonably foreseeable threats or injuries to life or property;

(E) any interest defined as property under State law; or

(F) any interest understood to be property based on custom, usage, common law, or mutually reinforcing understandings sufficiently well-grounded in law to back a claim of interest;

(6) ''State agency'' means any State department, agency, political subdivision, or instrumentality that—

(A) carries out or enforces a regulatory program required under Federal law;

(B) is delegated administrative or substantive responsibility under a Federal regulatory program; or

(C) receives Federal funds in connection with a regulatory program established by a State,

if the State enforcement of the regulatory program, or the receipt of Federal funds in connection with a regulatory program established by a State, is directly related to the taking of private property seeking to be vindicated under this Act; and

(7) ''taking of private property'', ''taking'', or ''take''—

(A) means any action whereby private property is directly taken as to require compensation under the fifth amendment to the United States Constitution or under this Act, including by physical invasion, regulation, exaction, condition, or other means; and

(B) shall not include—

(i) a condemnation action filed by the United States in an applicable court; or

(ii) an action filed by the United States relating to criminal forfeiture.

SEC. 204. COMPENSATION FOR TAKEN PROPERTY.

(a) IN GENERAL.—No agency or State agency, shall take private property except for public use and with just compensation to the property owner. A property owner shall receive just compensation if—

(1) as a consequence of an action of any agency, or State agency, private property (whether all or in part) has been physically invaded or taken for public use without the consent of the owner; and

(2)(A) such action does not substantially advance the stated governmental interest to be achieved by the legislation or regulation on which the action is based;

(B) such action exacts the owner's constitutional or otherwise lawful right to use the property or a portion of such property as a condition for the granting of a permit, license, variance, or any other agency action without a rough proportionality between the stated need for the required dedication and the impact of the proposed use of the property;

(C) such action results in the property owner being deprived, either temporarily or permanently, of all or substantially all economically beneficial or productive use of the property or that part of the property affected by the action without a showing that such deprivation inheres in the title itself;

(D) such action diminishes the fair market value of the affected portion of the property which is the subject of the action by 33 percent or more with respect to the value immediately prior to the governmental action; or

(E) under any other circumstance where a taking has occurred within the meaning of the fifth amendment of the United States Constitution.

(b) NO CLAIM AGAINST STATE OR STATE INSTRUMENTALITY.—No action may be filed under this section against a State agency for carrying out the functions described under section 203(6).

(c) BURDEN OF PROOF.—(1) The Government shall bear the burden of proof in any action described under—

(A) subsection (a)(2)(A), with regard to showing the nexus between the stated governmental purpose of the governmental interest and the impact on the proposed use of private property;

(B) subsection (a)(2)(B), with regard to showing the proportionality between the exaction and the impact of the proposed use of the property; and

(C) subsection (a)(2)(C), with regard to showing that such deprivation of value inheres in the title to the property.

(2) The property owner shall have the burden of proof in any action described under subsection (a)(2)(D), with regard to establishing the diminution of value of property.

(d) COMPENSATION AND NUISANCE EXCEPTION TO PAYMENT OF JUST COMPENSATION.—(1) No compensation shall be required by this Act if

the owner's use or proposed use of the property is a nuisance as commonly understood and defined by background principles of nuisance and property law, as understood within the State in which the property is situated, and to bar an award of damages under this Act, the United States shall have the burden of proof to establish that the use or proposed use of the property is a nuisance.

(2) Subject to paragraph (1), if an agency action directly takes property or a portion of property under subsection (a), compensation to the owner of the property that is affected by the action shall be either the greater of an amount equal to—

(A) the difference between—

(i) the fair market value of the property or portion of the property affected by agency action before such property became the subject of the specific government regulation; and

(ii) the fair market value of the property or portion of the property when such property becomes subject to the agency action; or

(B) business losses.

(e) TRANSFER OF PROPERTY INTEREST.—The United States shall take title to the property interest for which the United States pays a claim under this Act.

(f) SOURCE OF COMPENSATION.—Awards of compensation referred to in this section, whether by judgment, settlement, or administrative action, shall be promptly paid by the agency out of currently available appropriations supporting the activities giving rise to the claims for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

SEC. 205. JURISDICTION AND JUDICIAL REVIEW.

(a) IN GENERAL.—A property owner may file a civil action under this Act to challenge the validity of any agency action that adversely affects the owner's interest in private property in either the United States District Court or the United States Court of Federal Claims. This section constitutes express waiver of the sovereign immunity of the United States. Notwithstanding any other provision of law and notwithstanding the issues involved, the relief sought, or the amount in controversy, each court shall have concurrent jurisdiction over both claims for monetary relief and claims seeking invalidation of any Act of Congress or any regulation of an agency as defined under this Act affecting private property rights. The plaintiff shall have the election of the court in which to file a claim for relief.

(b) STANDING.—Persons adversely affected by an agency action taken under this Act shall have standing to challenge and seek judicial review of that action.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—(1) Section 1491(a) of title 28, United States Code, is amended—

(A) in paragraph (1) by amending the first sentence to read as follows: ''The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States for monetary relief founded either upon the Constitution or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, in cases not sounding in tort, or for invalidation of any Act of Congress or any regulation of an executive department that adversely affects private property rights in violation of the fifth amendment of the United States Constitution'';

(B) in paragraph (2) by inserting before the first sentence the following: ''In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate.''; and

(C) by adding at the end thereof the following new paragraphs:

''(4) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction, concurrent with the courts designated in section 1346(b) of this title, to render judgment upon any related tort claim authorized under section 2674 of this title.

''(5) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.''.

(2)(A) Section 1500 of title 28, United States Code, is repealed.

(B) The table of sections for chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1500.

SEC. 206. STATUTE OF LIMITATIONS.

The statute of limitations for actions brought under this title shall be 6 years from the date of the taking of private property.

SEC. 207. ATTORNEYS' FEES AND COSTS.

The court, in issuing any final order in any action brought under this title, shall award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff.

SEC. 208. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to interfere with the authority of any State to create additional property rights.

SEC. 209. EFFECTIVE DATE.

The provisions of this title and amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to any agency action that occurs after such date.

TITLE III—ALTERNATIVE DISPUTE RESOLUTION

SEC. 301. ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—Either party to a dispute over a taking of private property as defined under this Act or litigation commenced under title II of this Act may elect to resolve the dispute through settlement or arbitration. In the administration of this section—

(1) such alternative dispute resolution may only be effectuated by the consent of all parties;

(2) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(3) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this Act.

(b) COMPENSATION AS A RESULT OF ARBITRATION.—The amount of arbitration awards shall be paid from the responsible agency's currently available appropriations supporting the agency's activities giving rise to the claim for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(c) REVIEW OF ARBITRATION.—Appeal from arbitration decisions shall be to the United States District Court or the United States Court of Federal Claims in the manner prescribed by law for the claim under this Act.

(d) PAYMENT OF CERTAIN COMPENSATION.—In any appeal under subsection (c), the amount of the award of compensation shall be promptly paid by the agency from appropriations supporting the activities giving rise to the claim for compensation currently available at the time of final action on the appeal. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

TITLE IV—PRIVATE PROPERTY TAKING IMPACT ANALYSIS

SEC. 401. FINDINGS AND PURPOSE.

The Congress finds that—

(1) the Federal Government should protect the health, safety, welfare, and rights of the public; and

(2) to the extent practicable, avoid takings of private property by assessing the effect of government action on private property rights.

SEC. 402. DEFINITIONS.

For purposes of this title the term—

(1) ''agency'' means an agency as defined under section 203 of this Act, but shall not include the General Accounting Office;

(2) ''rule'' has the same meaning as such term is defined under section 551(4) of title 5, United States Code; and

(3) ''taking of private property'' has the same meaning as such term is defined under section 203 of this Act.

SEC. 403. PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

(a) IN GENERAL.—(1) The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this title; and

(B) subject to paragraph (2), all agencies of the Federal Government shall complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related agency action which is likely to result in a taking of private property.

(2) The provisions of paragraph (1)(B) shall not apply to—

(A) an action in which the power of eminent domain is formally exercised;

(B) an action taken—

(i) with respect to property held in trust by the United States; or

(ii) in preparation for, or in connection with, treaty negotiations with foreign nations;

(C) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(D) a study or similar effort or planning activity;

(E) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(F) the placement of a military facility or a military activity involving the use of solely Federal property;

(G) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(H) any case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation under section 553(b)(B) of title 5, United States Code, if the taking impact analysis is completed after the emergency action is carried out or the regulation is published.

(3) A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of the likelihood that a taking of private property will occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action is likely to require compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur; and

(E) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner.

(4) Each agency shall provide an analysis required under this section as part of any submission otherwise required to be made to the Office of Management and Budget in conjunction with a proposed regulation.

(b) GUIDANCE AND REPORTING REQUIREMENTS.—

(1) The Attorney General of the United States shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this section.

(2) No later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall submit a report to the Director of the Office of Management and Budget and the Attorney General of the United States identifying each agency action that has resulted in the preparation of a taking impact analysis, the filing of a taking claim, or an award of compensation under the just compensation clause of the fifth amendment of the United States Constitution. The Director of the Office of Management and Budget and the Attorney General of the United States shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies submitted under this paragraph.

(c) PUBLIC AVAILABILITY OF ANALYSIS.—An agency shall—

(1) make each private property taking impact analysis available to the public; and

(2) to the greatest extent practicable, transmit a copy of such analysis to the owner or any other person with a property right or interest in the affected property.

(d) PRESUMPTIONS IN PROCEEDINGS.—For the purpose of any agency action or administrative or judicial proceeding, there shall be a rebuttable presumption that the costs, values, and estimates in any private property takings impact analysis shall be outdated and inaccurate, if—

(1) such analysis was completed 5 years or more before the date of such action or proceeding; and

(2) such costs, values, or estimates have not been modified within the 5-year period preceding the date of such action or proceeding.

SEC. 404. DECISIONAL CRITERIA AND AGENCY COMPLIANCE.

(a) IN GENERAL.—No final rule shall be promulgated if enforcement of the rule could reasonably be construed to require an uncompensated taking of private property as defined by this Act.

(b) COMPLIANCE.—In order to meet the purposes of this Act as expressed in section 401 of this title, all agencies shall—

(1) review, and where appropriate, re-promulgate all regulations that result in takings of private property under this Act, and reduce such takings of private property to the maximum extent possible within existing statutory requirements;

(2) prepare and submit their budget requests consistent with the purposes of this Act as expressed in section 401 of this title for fiscal year 1997 and all fiscal years thereafter; and

(3) within 120 days of the effective date of this section, submit to the appropriate authorizing and appropriating committees of the Congress a detailed list of statutory changes that are necessary to meet fully the purposes of section 401 of this title, along with a statement prioritizing such amendments and an explanation of the agency's reasons for such prioritization.

SEC. 405. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit any right or remedy, constitute a condition precedent or a requirement to exhaust administrative remedies, or bar any claim of any person relating to such person's property under any other law, including claims made under this Act, section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of—

(A) the value of any property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

SEC. 406. STATUTE OF LIMITATIONS.

No action may be filed in a court of the United States to enforce the provisions of this title on or after the date occurring 6 years after the date of the submission of the applicable private property taking impact analysis to the Office of Management and Budget.

TITLE V—PRIVATE PROPERTY OWNERS ADMINISTRATIVE BILL OF RIGHTS

SEC. 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) a number of Federal environmental programs, specifically programs administered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), have been implemented by employees, agents, and representatives of the Federal Government in a manner that deprives private property owners of the use and control of property;

(2) as Federal programs are proposed that would limit and restrict the use of private property to provide habitat for plant and animal species, the rights of private property owners must be recognized and respected;

(3) private property owners are being forced by Federal policy to resort to extensive, lengthy, and expensive litigation to protect certain basic civil rights guaranteed by the United States Constitution;

(4) many private property owners do not have the financial resources or the extensive commitment of time to proceed in litigation against the Federal Government;

(5) a clear Federal policy is needed to guide and direct Federal agencies with respect to the implementation of environmental laws that directly impact private property;

(6) all private property owners should and are required to comply with current nuisance laws and should not use property in a manner that harms their neighbors;

(7) nuisance laws have traditionally been enacted, implemented, and enforced at the State and local level where such laws are best able to protect the rights of all private property owners and local citizens; and

(8) traditional pollution control laws are intended to protect the general public's health and physical welfare, and current habitat protection programs are intended to protect the welfare of plant and animal species.

(b) PURPOSES.—The purposes of this title are to—

(1) provide a consistent Federal policy to encourage, support, and promote the private ownership of property; and

(2) to establish an administrative process and remedy to ensure that the constitutional and legal rights of private property owners are protected by the Federal Government and Federal employees, agents, and representatives.

SEC. 502. DEFINITIONS.

For purposes of this title the term—

(1) ''the Acts'' means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(2) ''agency head'' means the Secretary or Administrator with jurisdiction or authority to take a final agency action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(3) ''non-Federal person'' means a person other than an officer, employee, agent, department, or instrumentality of—

(A) the Federal Government; or

(B) a foreign government;

(4) ''private property owner'' means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, acting in an official capacity or a State, municipality, or subdivision of a State) that—

(A) owns property referred to under paragraph (5) (A) or (B); or

(B) holds property referred to under paragraph (5)(C);

(5) ''property'' means—

(A) land;

(B) any interest in land; and

(C) the right to use or the right to receive water; and

(6) ''qualified agency action'' means an agency action (as that term is defined in section 551(13) of title 5, United States Code) that is taken—

(A) under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); or

(B) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 503. PROTECTION OF PRIVATE PROPERTY RIGHTS.

(a) IN GENERAL.—In implementing and enforcing the Acts, each agency head shall—

(1) comply with applicable State and tribal government laws, including laws relating to private property rights and privacy; and

(2) administer and implement the Acts in a manner that has the least impact on private property owners' constitutional and other legal rights.

(b) FINAL DECISIONS.—Each agency head shall develop and implement rules and regulations for ensuring that the constitutional and other legal rights of private property owners are protected when the agency head makes, or participates with other agencies in the making of, any final decision that restricts the use of private property in administering and implementing this Act.

SEC. 504. PROPERTY OWNER CONSENT FOR ENTRY.

(a) IN GENERAL.—An agency head may not enter privately owned property to collect information regarding the property, unless the private property owner has—

(1) consented in writing to that entry;

(2) after providing that consent, been provided notice of that entry; and

(3) been notified that any raw data collected from the property shall be made available at no cost, if requested by the private property owner.

(b) NONAPPLICATION.—Subsection (a) does not prohibit entry onto property for the purpose of obtaining consent or providing notice required under subsection (a).

SEC. 505. RIGHT TO REVIEW AND DISPUTE DATA COLLECTED FROM PRIVATE PROPERTY.

An agency head may not use data that is collected on privately owned property to implement or enforce the Acts, unless—

(1) the agency head has provided to the private property owner—

(A) access to the information;

(B) a detailed description of the manner in which the information was collected; and

(C) an opportunity to dispute the accuracy of the information; and

(2) the agency head has determined that the information is accurate, if the private property owner disputes the accuracy of the information under paragraph (1)(C).

SEC. 506. RIGHT TO AN ADMINISTRATIVE APPEAL OF WETLANDS DECISIONS.

Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) is amended by adding at the end the following new subsection:

''(u) ADMINISTRATIVE APPEALS.—

''(1) The Secretary or Administrator shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions under this section:

''(A) A determination of regulatory jurisdiction over a particular parcel of property.

''(B) The denial of a permit.

''(C) The terms and conditions of a permit.

''(D) The imposition of an administrative penalty.

''(E) The imposition of an order requiring the private property owner to restore or otherwise alter the property.

''(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the property involved in the action.

''(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995.''.

SEC. 507. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE ENDANGERED SPECIES ACT OF 1973.

Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding at the end the following new subsection:

''(i) ADMINISTRATIVE APPEALS.—

''(1) The Secretary shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions:

''(A) A determination that a particular parcel of property is critical habitat of a listed species.

''(B) The denial of a permit for an incidental take.

''(C) The terms and conditions of an incidental take permit.

''(D) The finding of jeopardy in any consultation on an agency action affecting a particular parcel of property under section 7(a)(2) or any reasonable and prudent alternative resulting from such finding.

''(E) Any incidental 'take' statement, and any reasonable and prudent measures included therein, issued in any consultation affecting a particular parcel of property under section 7(a)(2).

''(F) The imposition of an administrative penalty.

''(G) The imposition of an order prohibiting or substantially limiting the use of the property.

''(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the parcel of property involved in the action.

''(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995.''.

SEC. 508. COMPENSATION FOR TAKING OF PRIVATE PROPERTY.

(a) ELIGIBILITY.—A private property owner that, as a consequence of a final qualified agency action of an agency head, is deprived of 33 percent or more of the fair market value, or the economically viable use, of the affected portion of the property as determined by a qualified appraisal expert, is entitled to receive compensation in accordance with the standards set forth in section 204 of this Act.

(b) TIME LIMITATION FOR COMPENSATION REQUEST.—No later than 90 days after receipt of a final decision of an agency head that deprives a private property owner of fair market value or viable use of property for which compensation is required under subsection (a), the private property owner may submit in writing a request to the agency head for compensation in accordance with subsection (c).

(c) OFFER OF AGENCY HEAD.—No later than 180 days after the receipt of a request for compensation, the agency head shall stay the decision and shall provide to the private property owner—

(1) an offer to purchase the affected property of the private property owner at a fair market value assuming no use restrictions under the Acts; and

(2) an offer to compensate the private property owner for the difference between the fair market value of the property without those restrictions and the fair market value of the property with those restrictions.

(d) PRIVATE PROPERTY OWNER'S RESPONSE.—(1) No later than 60 days after the date of receipt of the agency head's offers under subsection (c) (1) and (2) the private property owner shall accept one of the offers or reject both offers.

(2) If the private property owner rejects both offers, the private property owner may submit the matter for arbitration to an arbitrator appointed by the agency head from a list of arbitrators submitted to the agency head by the American Arbitration Association. The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of that association. For purposes of this section, an arbitration is binding on—

(A) the agency head and a private property owner as to the amount, if any, of compensation owed to the private property owner; and

(B) whether the private property owner has been deprived of fair market value or viable use of property for which compensation is required under subsection (a).

(e) JUDGMENT.—A qualified agency action of an agency head that deprives a private property owner of property as described under subsection (a), is deemed, at the option of the private property owner, to be a taking under the United States Constitution and a judgment against the United States if the private property owner—

(1) accepts the agency head's offer under subsection (c); or

(2) submits to arbitration under subsection (d).

(f) PAYMENT.—An agency head shall pay a private property owner any compensation required under the terms of an offer of the agency head that is accepted by the private property owner in accordance with subsection (d), or under a decision of an arbitrator under that subsection, out of currently available appropriations supporting the activities giving rise to the claim for compensation. The agency head shall pay to the extent of available funds any compensation under this section not later than 60 days after the date of the acceptance or the date of the issuance of the decision, respectively. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(g) FORM OF PAYMENT.—Payment under this section, as that form is agreed to by the agency head and the private property owner, may be in the form of—

(1) payment of an amount equal to the fair market value of the property on the day before the date of the final qualified agency action with respect to which the property or interest is acquired; or

(2) a payment of an amount equal to the reduction in value.

SEC. 509. PRIVATE PROPERTY OWNER PARTICIPATION IN COOPERATIVE AGREEMENTS.

Section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended by adding at the end the following new subsection:

''(j) Notwithstanding any other provision of this section, when the Secretary enters into a management agreement under subsection (b) with any non-Federal person that establishes restrictions on the use of property, the Secretary shall notify all private property owners or lessees of the property that is subject to the management agreement and shall provide an opportunity for each private property owner or lessee to participate in the management agreement.''.

SEC. 510. ELECTION OF REMEDIES.

Nothing in this title shall be construed to—

(1) deny any person the right, as a condition precedent or as a requirement to exhaust administrative remedies, to proceed under title II or III of this Act;

(2) bar any claim of any person relating to such person's property under any other law, including claims made under section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(3) constitute a conclusive determination of—

(A) the value of property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

TITLE VI—MISCELLANEOUS

SEC. 601. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 602. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment and shall apply to any agency action of the United States Government after such date.

PRESSLER (AND OTHERS) AMENDMENT NO. 1566

(Ordered to lie on the table.)

Mr. PRESSLER (for himself, Mr. FAIRCLOTH, Mr. BURNS, and Mr. THOMAS) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place in the Dole substitute amendment No. 1487, insert the following:

SEC. . WAIVER OF PENALTIES WHEN FEDERAL WATER POLLUTION CONTROL ACT COMPLIANCE PLANS ARE IN EFFECT.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended by adding at the end the following:

''(h) WAIVER OF PENALTIES WHEN COMPLIANCE PLANS ARE IN EFFECT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of this Act, no civil or administrative penalty may be imposed under this Act against a unit of local government for a violation of a provision of this Act (including a violation of a condition of a permit issued under this Act)—

''(A) if the unit of local government has entered into an agreement with the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State to carry out a compliance plan with respect to a prior violation of the provision by the unit of local government; and

''(B) during the period—

''(i) beginning on the date on which the unit of local government and the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State enter into the agreement; and

''(ii) ending on the date on which the unit of local government is required to be in compliance with the provision under the plan.

''(2) REQUIREMENT OF GOOD FAITH.—Paragraph (1) shall not apply during any period in which the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State determines that the unit of local government is not carrying out the compliance plan in good faith.

''(3) OTHER ENFORCEMENT.—A waiver of penalties provided under paragraph (1) shall not apply with respect to a violation of any provision of this Act other than the provision that is the subject of the agreement described in paragraph (1)(A).''.

SIMON AMENDMENT NO. 1567

(Ordered to lie on the table.)

Mr. SIMON submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 96, strike lines 22 through 24 and insert the following:

(a) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, this Act and the amendments made by this Act shall take effect 45 days after the date on which Congress enacts legislation specifying the laws and proposed and existing regulations that will be affected by this Act and the amendments made by this Act.

SIMON (AND OTHERS) AMENDMENT NO. 1568

(Ordered to lie on the table.)

Mr. SIMON (for himself, Mr. HATFIELD, and Mr. REID) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place, insert the following new section;

SEC. . REPEAL OF PROHIBITIONS AGAINST POLITICAL RECOMMENDATIONS RELATING TO FEDERAL EMPLOYMENT.

(a) IN GENERAL.—(1) Section 3303 of title 5, United States Code, is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of sections for chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3303.

(2) Section 2302(b)(2) of title 5, United States Code, is amended to read as follows:

''(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

''(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

''(B) an evaluation of the character, loyalty, or suitability of such individual;''.

SIMON AMENDMENTS NOS. 1569–1571

(Ordered to lie on the table.)

Mr. SIMON submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1569

On page 34, strike lines 20 through 25 and insert the following:

''(i) FAILURE TO COMPLETE REVIEW.—If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 to repeal the rule.

AMENDMENT NO. 1570

On page 34, strike lines 20 through 25 and insert the following:

''(i) FAILURE TO COMPLETE REVIEW.—If the head of the agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) or (c), any person may file a civil action against the head of the agency for injunctive relief to compel the completion of such review by a date certain. The United States District Court for the District of Columbia shall have exclusive jurisdiction to grant such relief. The judge to whom any such case is referred shall hold a hearing on the case at the earliest practicable date and shall expedite the case in every way.

AMENDMENT NO. 1571

On page 34, strike lines 20 through 25.

HATCH AMENDMENT NO. 1572

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 1, strike lines 3 and 4 and insert: ''This Act may be cited as the 'Dole-Johnston Regulatory Reform Act of 1995'.''

BOND (AND ROBB) AMENDMENT NO. 1573

(Ordered to lie on the table.)

Mr. BOND (for himself and Mr. ROBB) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 44, line 15, strike everything after ''Section 629'' through page 46 line 4 and replace with the following:

''PETITION FOR ALTERNATIVE MEANS OF COMPLIANCE.

''(a) IN GENERAL.—Any person may petition an agency to modify or waive one or more rules or requirements applicable to one or more facilities owned or operated by such person. The agency is authorized to enter into an enforceable agreement establishing methods of compliance, not otherwise permitted by such rules or requirements, to be complied with in lieu of such rules or requirements. The petition shall identify with reasonable specificity, each facility for which an alternative means of compliance is sought, the rules and requirements for which a modification or waiver is sought and the proposed alternative means of compliance and means to verify compliance and for communication with the public. Where a state has delegated authority to operate a federal program within the state, or is authorized to operate a state program in lieu of an otherwise applicable federal program, the relevant agency shall delegate, if the state so requests, its authority under its authority under this section to the state.

''(b) STANDARDS.—The agency shall grant the petition if the state in which the facility is located agrees to any alternative means of compliance with respect to rules or requirements over which such state has delegated authority to operate a federal program, or is authorized to operate a state program in lieu of an otherwise applicable federal program, and the agency determines that there is a reasonable likelihood that the alternative means of compliance—

(1) would achieve an overall level of protection of health, safety and the environment at least substantially equivalent to or exceeding the level of protection provided by the rules or requirements subject to the petition;

(2) would provide a degree of public access to information, and of accountability and enforceability, at least substantially equivalent to the degree provided by the rules and requirements subject to the petition; and

(3) would not impose an undue burden on the agency responsible for enforcing the agreement entered into pursuant to subsection (f).

''(c) OTHER PROCEDURES.—If the statute authorizing a rule subject to a petition under this section provides specific available procedures or standards allowing an alternative means of compliance for such rule, such petition shall be reviewed consistent with such procedures or standards, unless the head of the agency for good cause finds that reviewing the petition in solely accordance with subsection (b) is in the public interest.

''(d) PUBLIC NOTICE AND INPUT.—No later than the date on which the petitioner submits the petition to the agency, the petitioner shall inform the public of the submission of such petition (including a brief description of the petition) through publication of a notice in the newspapers of general circulation in the area in which the facility or facilities are located. Agencies may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide public notice and opportunity to comment.

''(e) DEADLINE AND LIMITATION ON SUBSEQUENT PETITIONS.—A decision to grant or deny a petition under this subsection shall be made no later than 180 days after a complete petition is submitted. Following a decision to deny a petition under this section, no

petition, submitted by the same person, may be granted unless it applies to a different facility, or it is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the rules or requirements subject to the petition.

''(f) AGREEMENT.—Upon granting a petition under this section, the agency shall propose to the petitioner an enforceable agreement establishing alternative methods of compliance for the facility in lieu of the otherwise applicable rules or requirements and identifying such rules and requirements. Notwithstanding any other provision of law, such enforceable agreement may modify or waive the terms of any rule or requirement, including any standard, limitation, permit, order, regulations or other requirement issued by the agency consistent with the requirements of subsection (b) and (c), provided that the state in which the facility is located agrees to any modification or waiver of a rule or requirement over which such state has delegated authority to operate a federal program within the state, or is authorized to operate a state program in lieu of an otherwise applicable federal program. If accepted by the petitioner, compliance with such agreement shall be deemed to be compliance with the laws and rules identified in the agreement. The agreement shall contain appropriate mechanisms to assure compliance including money damages and injunctive relief, for violations of the agreement. The agreement may provide the state in which the facility is located with rights equivalent to the agency with respect to one or more provisions of the agreement.

''(g) NEPA NONAPPLICABILITY.—Approval of an alternative means of compliance under this section by an agency shall not be considered a major Federal action for purposes of the National Environmental Policy Act.

LAUTENBERG AMENDMENT NO. 1574

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 72, strike lines 1 through page 73 line 5 and insert the following:

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following

''CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

''SUBCHAPTER I—REGULATORY ANALYSIS

''601. Definitions.
''602. Regulatory agenda.
''603. Initial regulatory flexibility analysis.
''604. Final regulatory flexibility analysis.
''605. Avoidance of duplicative or unnecessary analyses.
''606. Effect on other law.
''607. Preparation of analysis.
''608. Procedures for waiver or delay of completion.
''609. Procedures for gathering comments.
''610. Periodic review of rules.
''611. Judicial review.
''612. Reports and intervention rights.

''SUBCHAPTER II—ANALYSIS AGENCY RULES

''621. Definitions.
''622. Rulemaking cost-benefit analysis.
''623. Agency regulatory review.
''624. Decisional criteria.
''625. Jurisdiction and judicial review.
''626. Deadlines for rulemaking.
''627. Special rule.
''628. Requirements for major environmental management activities.

''SUBCHAPTER III—RISK ASSESSMENTS

''631. Definitions.
''632. Applicability.
''633. Principles for risk assessments.
''634. Petition for review of a major free-standing risk assessment.
''635. Comprehensive risk reduction.
''636. Rule of construction.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''641. Procedures.
''642. Delegation of authority.
''643. Judicial review.
''644. Regulatory agenda.''.

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

(3) This subsection will be effective one day after enactment.

ROTH AMENDMENT NO. 1575

Mr. ROTH proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Add a new section 637 to Subchapter III as follows:

SEC. 637. INTERAGENCY COORDINATION.

''(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall—

''(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

''(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

''(3) establish appropriate interagency mechanisms to promote—

''(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

''(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

''(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

''(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

''(b) The President shall appoint National Peer Review Panels to review every 3 years the risk assessment practices of each covered agency for programs designated to protect human health, safety, or the environment. The Panels shall submit a report to the President and the Congress at least every 3 years containing the results of such review.''

DODD AMENDMENTS NOS. 1576–1580

(Ordered to lie on the table.)

Mr. DODD submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1576

On page 14, between lines 16 and 17, insert the following:

''(6) the term 'major rule' does not include a rule the primary purpose of which is to protect the health and safety of children.''

AMENDMENT NO. 1577

On page 50, line 2, strike the period at the end and insert ''; or''.

AMENDMENT NO. 1578

On page 49, line 21, strike ''or''.

AMENDMENT NO. 1579

On page 50, between lines 2 and 3, insert the following:

''(F) a rule or agency action the primary purposes of which is to protect the health or safety of children.''

AMENDMENT NO. 1580

On page 88, strike lines 15 through 19 and insert the following:

''§ 807. Exemptions.

''Nothing in this chapter shall apply to rules—

''(1) that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee; or

''(2) the primary purposes of which is to protect the health or safety of children.''.

GLENN (AND OTHERS) AMENDMENT NO. 1581

Mr. LEVIN (for Mr. GLENN, for himself, Mr. CHAFEE, Mr. LEVIN, Mr. LIEBERMAN, Mr. COHEN, Mr. PRYOR, Mr. KERRY, Mr. LAUTENBERG, Mr. DASCHLE, Mrs. BOXER, Mr. KOHL, Mr. SIMON, Mr. KENNEDY, Mr. DODD, Mrs. MURRAY, Mr. AKAKA, Mr. JEFFORDS, Mr. BIDEN, Mr. DORGAN, Mr. BAUCUS, and Mr. KERREY) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Regulatory Procedures Reform Act of 1995''.

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in paragraph (13), by striking out ''; and'' and inserting in lieu thereof a semicolon;

(2) in paragraph (14), by striking out the period and inserting in lieu thereof ''; and''; and

(3) by adding at the end thereof the following new paragraph:

''(15) 'Director' means the Director of the Office of Management and Budget.''.

SEC. 3. ANALYSIS OF AGENCY RULES.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''§ 621. Definitions

''For purposes of this subchapter the definitions under section 551 shall apply and—

''(1) the term 'benefit' means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable including social, environmental, and economic

benefits, that are expected to result directly or indirectly from implementation of or compliance with, a rule or an alternative to a rule;

''(2) the term 'cost' means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable including social, environmental, and economic effects that are expected to result directly or indirectly from implementation of, or compliance with, a rule or an alternative to a rule;

''(3) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

''(4)(A) the term 'major rule' means a rule or a group of closely related rules that the agency proposing the rule, the Director, or a designee of the President reasonably determines is likely to have a gross annual effect on the economy of $100,000,000 or more in reasonably quantifiable costs and this limit may be adjusted periodically by the Director, at his or her sole discretion, to account for inflation; and

''(B) the term 'major rule' shall not include—

''(i) a rule that involves the internal revenue laws of the United States;

''(ii) a rule or agency action that authorizes the introduction into, or removal from, commerce, or recognizes the marketable status, of a product; or

''(iii) a rule exempt from notice and public comment procedure under section 553 of this title;

''(5) the term 'market-based mechanism' means a regulatory program that—

''(A) imposes legal accountability for the achievement of an explicit regulatory objective, including the reduction of environmental pollutants or of risks to human health, safety, or the environment, on each regulated person;

''(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, and such flexibility shall, where feasible and appropriate, include the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

''(C) permits regulated persons to respond at their own discretion in an automatic manner, consistent with subparagraph (B), to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates under subparagraph (A);

''(6) the term 'performance standard' means a requirement that imposes legal accountability for the achievement of an explicit regulatory objective, such as the reduction of environmental pollutants or of risks to human health, safety, or the environment, on each regulated person;

''(7) the term 'risk assessment' has the same meaning as such term is defined under section 631(5); and

''(8) the term 'rule' has the same meaning as in section 551(4) of this title, and shall not include—

''(A) a rule of particular applicability that approves or prescribes for the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

''(B) a rule relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System or by the Federal Open Market Committee;

''(C) a rule relating to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)); credit unions; the Federal Home Loan Banks; government-sponsored housing enterprises; a Farm Credit System Institution; foreign banks, and their branches, agencies, commercial lending companies or representative offices that operate in the United States and any affiliate of such foreign banks (as those terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101)); or a rule relating to the payments system or the protection of deposit insurance funds or Farm Credit Insurance Fund;

''(D) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission pursuant to sections 312(a)(7) and 315 of the Communications Act of 1934 (47 U.S.C. 312(a)(7) and 315); or

''(E) a rule required to be promulgated at least annually pursuant to statute.

''§ 622. Rulemaking cost-benefit analysis

''(a) Before publishing notice of a proposed rulemaking for any rule, each agency shall determine whether the rule is or is not a major rule. For the purpose of any such determination, a group of closely related rules shall be considered as one rule.

''(b)(1) If an agency has determined that a rule is not a major rule, the Director or a designee of the President may, as appropriate, determine that the rule is a major rule no later than 30 days after the close of the comment period for the rule.

''(2) Such determination shall be published in the Federal Register, together with a succinct statement of the basis for the determination.

''(c)(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

''(B)(i) When the Director or a designee of the President has published a determination that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

''(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment pursuant to section 553 in the same manner as if the draft cost-benefit analysis had been issued with the notice of proposed rulemaking.

''(2) Each initial cost-benefit analysis shall contain—

''(A) an analysis of the benefits of the proposed rule, including any benefits that cannot be quantified, and an explanation of how the agency anticipates that such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

''(B) an analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates that such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

''(C) an identification (including an analysis of costs and benefits) of an appropriate number of reasonable alternatives allowed under the statute granting the rulemaking authority for achieving the identified benefits of the proposed rule, including alternatives that—

''(i) require no government action;

''(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply; and

''(iii) employ voluntary programs, performance standards, or market-based mechanisms that permit greater flexibility in achieving the identified benefits of the proposed rule and that comply with the requirements of subparagraph (D);

''(D) an assessment of the feasibility of establishing a regulatory program that operates through the application of market-based mechanisms;

''(E) an explanation of the extent to which the proposed rule—

''(i) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply; and

''(ii) employs voluntary programs, performance standards, or market-based mechanisms that permit greater flexibility in achieving the identified benefits of the proposed rule;

''(F) a description of the quality, reliability, and relevance of scientific or economic evaluations or information in accordance with the cost-benefit analysis and risk assessment requirements of this chapter;

''(G) if not expressly or implicitly inconsistent with the statute under which the agency is proposing the rule, an explanation of the extent to which the identified benefits of the proposed rule justify the identified costs of the proposed rule, and an explanation of how the proposed rule is likely to substantially achieve the rulemaking objectives in a more cost-effective manner than the alternatives to the proposed rule, including alternatives identified in accordance with subparagraph (C); and

''(H) if a major rule subject to subchapter III addresses risks to human health, safety, or the environment—

''(i) a risk assessment in accordance with this chapter; and

''(ii) for each such proposed or final rule, an assessment of risk reduction or other benefits associated with each significant regulatory alternative considered by the agency in connection with the rule or proposed rule.

''(d)(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

''(2) Each final cost-benefit analysis shall contain—

''(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking, including the market-based mechanisms identified under subsection (c)(2)(C)(iii); and

''(B) if not expressly or implicitly inconsistent with the statute under which the agency is acting, a reasonable determination, based upon the rulemaking file considered as a whole, whether—

''(i) the benefits of the rule justify the costs of the rule; and

''(ii) the rule will achieve the rulemaking objectives in a more cost-effective manner than the alternatives described in the rulemaking, including the market-based mechanisms identified under subsection (c)(2)(C)(iii).

''(e)(1) The analysis of the benefits and costs of a proposed and a final rule required under this section shall include, to the extent feasible, a quantification or numerical

estimate of the quantifiable benefits and costs. Such quantification or numerical estimate shall be made in the most appropriate units of measurement, using comparable assumptions, including time periods, shall specify the ranges of predictions, and shall explain the margins of error involved in the quantification methods and in the estimates used. An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a final rule pursuant to this section in as precise and succinct a manner as possible. An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

''(2)(A) In evaluating and comparing costs and benefits and in evaluating the risk assessment information developed under subchapter III, the agency shall rely on cost, benefit, or risk assessment information that is accompanied by data, analysis, or other supporting materials that would enable the agency and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to such information.

''(B) The agency evaluations of the relationships of the benefits of a proposed and final rule to its costs shall be clearly articulated in accordance with this section.

''(f) As part of the promulgation of each major rule that addresses risks to human health, safety, or the environment, the head of the agency or the President shall make a determination that—

''(1) the risk assessment and the analysis under subsection (c)(2)(H) are based on a scientific evaluation of the risk addressed by the major rule and that the conclusions of such evaluation are supported by the available information; and

''(2) the regulatory alternative chosen will reduce risk in a cost-effective and, to the extent feasible, flexible manner, taking into consideration any of the alternatives identified under subsection (c)(2) (C) and (D).

''(g) The requirements of this subchapter shall not alter the criteria for rulemaking otherwise applicable under other statutes.

''§ 623. Judicial review

''(a) Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall not be subject to judicial review except in connection with review of a final agency rule and according to the provisions of this section.

''(b) Any determination by a designee of the President or the Director that a rule is, or is not, a major rule shall not be subject to judicial review in any manner.

''(c) The determination by an agency that a rule is, or is not, a major rule shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination.

''(d) If the cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration. If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

''(e) Any cost-benefit analysis or risk assessment prepared under this chapter shall not be subject to judicial consideration separate or apart from review of the agency action to which it relates. When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.

''§ 624. Deadlines for rulemaking

''(a) All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(b) All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(c) In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

On page 15, beginning with line 23, strike out all through line 18 on page 21 and insert in lieu thereof the following:

''§ 625. Agency regulatory review

''(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

''(2) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) In selecting rules and establishing deadlines for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

''(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) the benefits of the rule do not justify its costs or the rule does not achieve the rulemaking objectives in a cost-effective manner;

''(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

''(D) the importance of each rule relative to other rules being reviewed under this section; or

''(E) the resources expected to be available to the agency to carry out the reviews under this section.

''(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

''(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (a)(3) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) The head of the agency shall modify the agency's schedule under this section to reflect any change contained in an appropriations Act under subsection (d).

''(c) JUDICIAL REVIEW.—(1) Notwithstanding section 623 and except as provided otherwise in this subsection, judicial review of agency action taken pursuant to the requirements of this section shall be limited to review of compliance or noncompliance with the requirements of this section.

''(2) Agency decisions to place, or decline to place, a rule on the schedule, and the deadlines for completion of a rule, shall not be subject to judicial review.

''(d) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

''(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

''(B) include a list of rules which may be subject to subsection (e)(3) during the year for which the budget proposal is made.

''(2) Amendments to the schedule under subsection (b) to place a rule on the schedule for review or change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may recommend, to the House of Representatives or Senate appropriations committee (as the case may be), such amendments. The appropriations committee to which such amendments have been submitted may include the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

''(e) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

''(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

''(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

''(i) addresses public comments generated by the notice in subparagraph (A);

''(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether the benefits of the rule justify its costs;

''(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

''(iv) solicits public comment on the preliminary determination for the rule; and

''(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

''(i) addresses public comments generated by the notice in subparagraph (B); and

''(ii) contains a final determination of whether to continue, amend, or repeal the rule;

''(iii) if the agency determines to continue the rule and the rule is a major rule, describes a final analysis as to whether the benefits of the rule justify its costs; and

''(iv) if the agency determines to amend or repeal the rule, contains a notice of proposed rulemaking under section 553.

''(2) If the final determination of the agency is to continue the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

''(3) If the final determination of the agency is to continue the rule, and the agency has concluded that the benefits do not justify the costs, the agency shall transmit to the appropriate committees of Congress the cost-benefit analysis and a statement of the agency's reasons for continuing the rule.

''(f) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend or repeal a major rule under subsection (e)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (e)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

''(g) COMPLETION OF REVIEW OR REPEAL OF RULE.—If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 of this title to repeal the rule and shall complete such rulemaking within 2 years of the deadline established under subsection (b).

''(h) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue a rule under subsection (e)(1)(C) shall be considered final agency action.

''(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (g) by the date established under such subsection shall be subject to judicial review pursuant to section 706(1) of this title.''.

''§ 626. Public participation and accountability

''In order to maximize accountability for, and public participation in, the development and review of regulatory actions each agency shall, consistent with chapter 5 and other applicable law, provide the public with opportunities for meaningful participation in the development of regulatory actions, including—

''(1) seeking the involvement, where practicable and appropriate, of those who are intended to benefit from and those who are expected to be burdened by any regulatory action;

''(2) providing in any proposed or final rulemaking notice published in the Federal Register—

''(A) a certification of compliance with the requirements of this chapter, or an explanation why such certification cannot be made;

''(B) a summary of any regulatory analysis required under this chapter, or under any other legal requirement, and notice of the availability of the regulatory analysis;

''(C) a certification that the rule will produce benefits that will justify the cost to the Government and to the public of implementation of, and compliance with, the rule, or an explanation why such certification cannot be made; and

''(D) a summary of the results of any regulatory review and the agency's response to such review, including an explanation of any significant changes made to such regulatory action as a consequence of regulatory review;

''(3) identifying, upon request, a regulatory action and the date upon which such action was submitted to the designated officer to whom authority was delegated under section 644 for review;

''(4) disclosure to the public, consistent with section 633(3), of any information created or collected in performing a regulatory analysis required under this chapter, or under any other legal requirement; and

''(5) placing in the appropriate rulemaking record all written communications received from the Director, other designated officer, or other individual or entity relating to regulatory review.

At the appropriate place in the bill, insert the following new section:

SEC. 627. CONFLICT OF INTEREST RELATING TO COST-BENEFIT ANALYSES AND RISK ASSESSMENTS.

(a) INFORMATION BEARING ON POSSIBLE CONFLICT OF INTEREST.—

(1) DEFINITION.—For purposes of this section, the term ''contract'' means any contract, agreement, or other arrangement, whether by competitive bid or negotiation, entered into with a Federal agency for the conduct of research, development, evaluation activities, or for technical and management support services relating to any cost-benefit analyses or risk assessment under subchapter II or III of chapter 6 of title 5, United States Code (as added by section 4(a) of this Act). This section shall not apply to the provisions of section 635.

(2) IN GENERAL.—When an agency proposes to enter into a contract with a person or entity, such person shall provide to the agency before entering into such contract all relevant information, as determined by the agency, bearing on whether that person has a possible conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons.

(3) SUBCONTRACTOR INFORMATION.—A person entering into a contract shall ensure, in accordance with regulations prescribed by the head of the agency, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract of more than $10,000.

(b) REQUIRED FINDING THAT NO CONFLICT OF INTEREST EXISTS OR THAT CONFLICTS HAVE BEEN AVOIDED; MITIGATION OF CONFLICT WHEN CONFLICT IS UNAVOIDABLE.—

(1) IN GENERAL.—Subject to paragraph (2), the head of an agency shall not enter into any contract unless the agency head finds, after evaluating all information provided under subsection (a) and any other information otherwise made available that—

(A) it is unlikely that a conflict of interest would exist; or

(B) such conflict has been avoided after appropriate conditions have been included in such contract.

(2) EXCEPTION.—If the head of an agency determines that a conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions in the contract, the agency head may enter into such contract if the agency head—

(A) determines that it is in the best interests of the United States to enter into the contract; and

(B) includes appropriate conditions in such contract to mitigate such conflict.

(c) RULES AND REGULATIONS.—No later than 240 days after the date of the enactment of this Act, the Federal Acquisition Review Council shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code, without regard to subsection (a) of such section.

''SUBCHAPTER III—RISK ASSESSMENTS

''§ 631. Definitions

''For purposes of this subchapter, the definitions under sections 551 and 621 shall apply, and—

''(1) the term 'covered agency' means each agency required to comply with this subchapter, as provided in section 632;

''(2) the term 'emergency' means an imminent or substantial endangerment to public health, safety, or the environment if no action is taken;

''(3) the term 'exposure assessment' means the scientific determination of the intensity, frequency, and duration of exposures to the hazard in question;

''(4) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

''(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

''(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed individual population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

''(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper and lower bounds as appropriate; and

''(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

''§ 632. Applicability

''(a) Except as provided in subsection (c), this subchapter shall apply to all risk assessments and risk characterizations prepared in connection with a major rule addressing health, safety, and environmental risks by—

''(1) the Secretary of Defense, for major rules relating to the programs and responsibilities of the United States Army Corps of Engineers;

''(2) the Secretary of the Interior, for major rules relating to the programs and responsibilities of the Office of Surface Mining Reclamation and Enforcement;

''(3) the Secretary of Agriculture, for major rules relating to the programs and responsibilities of—

''(A) the Animal and Plant Health Inspection Service;

''(B) the Grain Inspection, Packers, and Stockyards Administration;

''(C) the Food Safety and Inspection Service;

''(D) the Forest Service; and

''(E) the Natural Resources Conservation Service;

''(4) the Secretary of Commerce, for major rules relating to the programs and responsibilities of the National Marine Fisheries Service;

''(5) the Secretary of Labor, for major rules relating to the programs and responsibilities of—

''(A) the Occupational Safety and Health Administration; and

''(B) the Mine Safety and Health Administration;

''(6) the Secretary of Health and Human Services, for major rules relating to the programs and responsibilities assigned to the Food and Drug Administration;

''(7) the Secretary of Transportation, for major rules relating to the programs and responsibilities assigned to—

''(A) the Federal Aviation Administration; and

''(B) the National Highway Traffic Safety Administration;

''(8) the Secretary of Energy, for major rules relating to nuclear safety, occupational safety and health, and environmental restoration and waste management;

''(9) the Chairman of the Consumer Product Safety Commission;

''(10) the Administrator of the Environmental Protection Agency; and

''(11) the Chairman of the Nuclear Regulatory Commission.

''(b)(1) No later than 18 months after the effective date of this section, the President, acting through the Director of the Office of Management and Budget, shall determine whether other Federal agencies should be considered covered agencies for the purposes of this subchapter. Such determination, with respect to a particular Federal agency, shall be based on the impact of risk assessment documents and risk characterization documents on—

''(A) regulatory programs administered by that agency; and

''(B) the communication of risk information by that agency to the public.

''(2) If the President makes a determination under paragraph (1), this subchapter shall apply to any agency determined to be a covered agency beginning on a date set by the President. Such date may be no later than 6 months after the date of such determination.

''(c)(1) This subchapter shall not apply to risk assessments or risk characterizations performed with respect to—

''(A) an emergency determined by the head of an agency;

''(B) a health, safety, or environmental inspection, compliance or enforcement action, or individual facility permitting action; or

''(C) a screening analysis.

''(2) This subchapter shall not apply to any food, drug, or other product label, or to any risk characterization appearing on any such label.

''§ 633. Savings provisions

''Nothing in this subchapter shall be construed to—

''(1) modify any statutory standard or requirement designed to protect human health, safety, or the environment; or

''(2) require the disclosure of any trade secret or other confidential information.

''§ 634. Principles for risk assessments

''(a)(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

''(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

''(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

''(4) An agency shall not be required to repeat discussions or explanations in each risk assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that meets the requirements of this section.

''(5)(A) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

''(B)(i) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

''(ii) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk.

''(b)(1) The head of each agency shall consider in each risk assessment sound, reasonably available scientific information, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions.

''(2) The head of an agency shall select data for use in the assessment based on an appropriate consideration of the quality and relevance of the data, and shall describe the basis for selecting the data.

''(3) In making its selection of data, the head of an agency shall consider whether the data were developed in accordance with good scientific practice or other appropriate protocols to ensure data quality.

''(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered in the analysis by the head of an agency under paragraph (2).

''(5) When material conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information, including the likelihood of alternative interpretations of data.

''(c)(1) To the maximum extent practicable, the head of each agency shall use postulates, including default assumptions, inferences, models, or safety factors, when relevant and adequate scientific data and understanding, including site-specific data, are lacking.

''(2) When a risk assessment involves choice of a postulate, the head of the agency shall—

''(A) identify the postulate and its scientific or policy basis, including the extent to which the postulate has been validated by, or conflicts with, empirical data;

''(B) explain the basis for any choices among postulates; and

''(C) describe reasonable alternative postulates that were not selected by the agency for use in the risk assessment, and the sensitivity for the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

''(3) An agency shall not inappropriately combine or compound multiple postulates.

''(4) The head of each agency shall develop a procedure and publish guidelines for choosing default postulates and for deciding when and how in a specific risk assessments to adopt alternative postulates or to use available scientific information in place of a default postulate.

''(d) The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

''(e) In each risk assessment supporting a major rule, the head of each agency shall include in the risk characterization, as appropriate, each of the following:

''(1) A description of the hazard of concern.

''(2) A description of the populations or natural resources that are the subject of the risk assessment.

''(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

''(4) A description of the nature and severity of the harm that could plausibly occur.

''(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

''(f) To the extent feasible and scientifically appropriate, the head of an agency shall—

''(1) express the overall estimate of risk as a range or probability distribution that reflects variabilities and uncertainties in the analysis;

''(2) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the range and distribution of risk to the general population and, where appropriate, to more highly exposed or sensitive subpopulations; and

''(3) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

''(g) The head of an agency shall place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context, including appropriate comparisons with other risks that are familiar to, and routinely encountered by, the general public. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks.

''(h) In any notice of proposed or final regulatory action subject to this subchapter, the head of an agency shall describe significant substitution risks to human health or safety identified by the agency or contained in information provided to the agency by a commentator.

''§ 635. Peer review

''(a) The head of each covered agency shall develop a systematic program for independent and external peer review required under subsection (b). (1) Such program shall be applicable throughout each covered agency and—

''(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other formal or informal devices that are balanced and that consist of members with expertise relevant to the sciences involved in regulatory decisions and who are independent of the covered agency; and

''(B) be broadly representative and balanced and, to the extent relevant and appropriate, may include persons affiliated with Federal, State, local, or tribal governments, small businesses, other representatives of industry, universities, agriculture, labor consumers, conservation organizations, or other public interest groups and organizations;

''(2) may exclude any person with substantial and relevant expertise as a panel member on the basis that such person represents an entity that may have a potential financial interest in the outcome, or may include such person if such interest is fully disclosed to the agency, and in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included on the panel;

''(3) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and an agency response to all significant peer review comments; and

''(4) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

''(b)(1)(A) Except as provided under subparagraph (B), each covered agency shall provide for peer review in accordance with this section of any risk assessment or cost-benefit analysis that forms the basis of any major rule that addresses risks to the environment, health, or safety.

''(B) Subparagraph (A) shall not apply to a rule or other action taken by an agency to authorize or approve any individual substance or product.

''(2) The Director of the Office of Management and Budget may order that peer review be provided for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions or would establish an important precedent.

''(c) Each peer review under this section shall include a report to the Federal agency concerned with respect to the scientific and technical merit of data and methods used for the risk assessments or cost-benefit analyses.

''(d) The head of the covered agency shall provide a written response to all significant peer review comments.

''(e) All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

''(f) No peer review shall be required under this section for any data, method, document, or assessment, or any component thereof, which has been previously subjected to peer review.

''(g) The requirements of this subsection shall not apply to a specific rulemaking where the head of an agency has published a determination, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, and notified the Congress, that the agency is unable to comply fully with the peer review requirements of this subsection and that the rulemaking process followed by that agency provides sufficient opportunity for scientific or technical review of risk assessments or cost-benefit analysis required by this subchapter.''

''§ 636. Guidelines, plan for assessing new information, and report

''(a)(1)(A) As soon as practicable and scientifically feasible, each covered agency shall adopt, after notification and opportunity for public comment, guidelines to implement the risk assessment principles under section 634, as well as the cost-benefit analysis requirements under section 622, and shall provide a format for summarizing risk assessment results.

''(B) No later than 12 months after the effective date of this section, the head of each covered agency shall issue a report on the status of such guidelines to the Congress.

''(2) The guidelines under paragraph (1) shall—

''(A) include guidance on use of specific technical methodologies and standards for acceptable quality of specific kinds of data;

''(B) address important decisional factors for the risk assessment, risk characterization, and cost-benefit analysis at issue; and

''(C) provide procedures for the refinement and replacement of policy-based default assumptions.

''(b) The guidelines, plan and report under this section shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State agencies and local governments, and such other departments and agencies, organizations, or persons as may be advisable.

''(c) The President shall review the guidelines published under this section at least every 4 years.

''(d) The development, issuance, and publication of risk assessment and risk characterization guidelines under this section shall not be subject to judicial review.

''§ 637. Research and training in risk assessment

''(a) The head of each covered agency shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

''(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

''(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

''(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

''(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

''(b) The head of each covered agency shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

''§ 638. Interagency coordination

''(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall—

''(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

''(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

''(3) establish appropriate interagency mechanisms to promote—

''(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

''(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

''(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

''(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

''(b) review every 3 years the risk assessment practices of each covered agency for programs designed to protect human health, safety, or the environment and submit a report to the President and the Congress at least every 3 years containing the results of such review.

''§ 639. Plan for review of risk assessments

''(a) No later than 18 months after the effective date of this section, the head of each covered agency shall publish a plan to review and revise any risk assessment published before the expiration of such 18-month period if the covered agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment.

''(b) A plan under subsection (a) shall—

''(1) provide procedures for receiving and considering new information and risk assessments from the public; and

''(2) set priorities and criteria for review and revision of risk assessments based on such factors as the agency head considers appropriate.

''§ 640. Judicial review

''The provisions of section 623 relating to judicial review shall apply to this subchapter.

''§ 640a. Deadlines for rulemaking

''The provisions of section 624 relating to deadlines for rulemaking shall apply to this subchapter.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''§ 641. Definition

''For purposes of this subchapter, the definitions under sections 551 and 621 shall apply.

''§ 642. Procedures

''The Director or other designated officer to whom authority is delegated under section 644 shall—

''(1) establish procedures for agency compliance with this chapter; and

''(2) monitor, review, and ensure agency implementation of such procedures.

''§ 643. Promulgation and adoption

''(a) Procedures established pursuant to section 642 shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

''(b)(1) If procedures established pursuant to section 642 include review of any initial or final analyses of a rule required under this chapter, the time for any such review of any initial analysis shall not exceed 60 days following the receipt of the analysis by the Director, a designee of the President, or by an officer to whom the authority granted under section 642 has been delegated pursuant to section 644.

''(2) The time for review of any final analysis required under this chapter shall not exceed 60 days following the receipt of the analysis by the Director, a designee of the President, or such officer.

''(3)(A) The times for each such review may be extended for good cause by the President or such officer for an additional 30 days.

''(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

''§ 644. Delegation of authority

''(a) The President shall delegate the authority granted by this subchapter to the Director or to another officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

''(b) Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

''§ 645. Public disclosure of information

''The Director or other designated officer to whom authority is delegated under section 644, in carrying out the provisions of section 642, shall establish procedures (covering all employees of the Director or other

designated officer) to provide public and agency access to information concerning regulatory review actions, including—

''(1) disclosure to the public on an ongoing basis of information regarding the status of regulatory actions undergoing review;

''(2) disclosure to the public, no later than publication of, or other substantive notice to the public concerning a regulatory action, of—

''(A) all written communications, regardless of form or format, including drafts of all proposals and associated analyses, between the Director or other designated officer and the regulatory agency;

''(B) all written communications, regardless of form or format, between the Director or other designated officer and any person not employed by the executive branch of the Federal Government relating to the substance of a regulatory action;

''(C) a record of all oral communications relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(D) a written explanation of any review action and the date of such action; and

''(3) disclosure to the regulatory agency, on a timely basis, of—

''(A) all written communications between the Director or other designated officer and any person who is not employed by the executive branch of the Federal Government;

''(B) a record of all oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(C) a written explanation of any review action taken concerning an agency regulatory action.

''§ 646. Judicial review

''The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 644 shall not be subject to judicial review in any manner.''.

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) IN GENERAL.—Section 611 of title 5, United States Code, is amended to read as follows:

''§ 611. Judicial review

''(a)(1) Except as provided in paragraph (2), no later than 1 year after the effective date of a final rule with respect to which an agency—

''(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

''(B) prepared a final regulatory flexibility analysis pursuant to section 604,

an affected small entity may petition for the judicial review of such certification or analysis in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review such certification or analysis.

''(2)(A) Except as provided in subparagraph (B), in the case of a provision of law that requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period provided in paragraph (1), such lesser period shall apply to a petition for the judicial review under this subsection.

''(B) In a case in which an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed no later than—

''(i) 1 year; or

''(ii) in a case in which a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period provided in paragraph (1), the number of days specified in such provision of law,

after the date the analysis is made available to the public.

''(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

''(4) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

''(5)(A) In a case in which an agency certifies that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

''(B) In a case in which the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared by the agency without complying with section 604.

''(6) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5) (or such longer period as the court may provide), the agency fails, as appropriate—

''(A) to prepare the analysis required by section 604; or

''(B) to take corrective action consistent with section 604 of this title,

the court may stay the rule or grant such other relief as it deems appropriate.

''(7) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

''(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

''(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the effective date of this Act, except that the judicial review authorized by section 611(a) of title 5, United States Code (as added by subsection (a)), shall apply only to final agency rules issued after such effective date.

(c) PRESIDENTIAL AUTHORITY.—Nothing in this Act shall limit the exercise by the President of the authority and responsibility that the President otherwise possesses under the Constitution and other laws of the United States with respect to regulatory policies, procedures, and programs of departments, agencies, and offices.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Part I of title 5, United States Code, is amended by striking out the chapter heading and table of sections for chapter 6 and inserting in lieu thereof the following:

''CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

''SUBCHAPTER I—REGULATORY ANALYSIS

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''SUBCHAPTER III—RISK ASSESSMENTS

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

(2) Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

SEC. 4. CONGRESSIONAL REVIEW.

(a) IN GENERAL.—Part I of title 5, United States Code, is amended by inserting after chapter 7 the following new chapter:

''CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

''§ 801. Congressional review of agency rulemaking

''(a) For purposes of this chapter, the term—

''(1) 'major rule' means a major rule as defined under section 621(4) of this title and as determined under section 622 of this title; and

''(2) 'rule' (except in reference to a rule of the Senate or House of Representatives) is a reference to a major rule.

''(b)(1) Upon the promulgation of a final major rule, the agency promulgating such rule shall submit to the Congress a copy of the rule, the statement of basis and purpose for the rule, and the proposed effective date of the rule.

''(2) A rule submitted under paragraph (1) shall not take effect as a final rule before the latest of the following:

''(A) The later of the date occurring 45 days after the date on which—

''(i) the Congress receives the rule submitted under paragraph (1); or

''(ii) the rule is published in the Federal Register.

''(B) If the Congress passes a joint resolution of disapproval described under subsection (i) relating to the rule, and the President signs a veto of such resolution, the earlier date—

''(i) on which either House of Congress votes and fails to override the veto of the President; or

''(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President.

''(C) The date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under subsection (i) is approved).

''(c) A major rule shall not take effect as a final rule if the Congress passes a joint resolution of disapproval described under subsection (i), which is signed by the President or is vetoed and overridden by the Congress.

''(d)(1) Notwithstanding any other provision of this section (except subject to paragraph (2)), a major rule that would not take effect by reason of this section may take effect if the President makes a determination and submits written notice of such determination to the Congress that the major rule should take effect because such major rule is—

''(A) necessary because of an imminent threat to health or safety, or other emergency;

''(B) necessary for the enforcement of criminal laws; or

''(C) necessary for national security.

''(2) An exercise by the President of the authority under this subsection shall have no effect on the procedures under subsection (i) or the effect of a joint resolution of disapproval under this section.

''(e)(1) Subsection (i) shall apply to any major rule that is promulgated as a final rule during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes.

''(2) For purposes of subsection (i), a major rule described under paragraph (1) shall be treated as though such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date the succeeding Congress first convenes.

''(3) During the period between the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, a rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law.

''(f) Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under subsection (i) shall be treated as though such rule had never taken effect.

''(g) If the Congress does not enact a joint resolution of disapproval under subsection (i), no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such major rule, related statute, or joint resolution of disapproval.

''(h) If the agency fails to comply with the requirements of subsection (b) for any rule, the rule shall cease to be enforceable against any person.

''(i)(1) For purposes of this subsection, the term 'joint resolution' means only a joint resolution introduced after the date on which the rule referred to in subsection (b) is received by Congress the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the _____ relating to _____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in.)

''(2)(A) In the Senate, a resolution described in paragraph (1) shall be referred to the committees with jurisdiction. Such a resolution shall not be reported before the eighth day after its submission or publication date.

''(B) For purposes of this subsection, the term 'submission or publication date' means the later of the date on which—

''(i) the Congress receives the rule submitted under subsection (b)(1); or

''(ii) the rule is published in the Federal Register.

''(3) In the Senate, if the committee to which a resolution described in paragraph (1) is referred has not reported such resolution (or an identical resolution) at the end of 20 calendar days after its submission or publication date, such committee may be discharged on a petition approved by 30 Senators from further consideration of such resolution and such resolution shall be placed on the Senate calendar.

''(4)(A) In the Senate, when the committee to which a resolution is referred has reported, or when a committee is discharged (under paragraph (3)) from further consideration of, a resolution described in paragraph (1), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Senator to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) shall be waived. The motion shall be privileged in the Senate and shall not be debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the Senate until disposed of.

''(B) In the Senate, debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall be in order and shall not be debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution shall not be in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order.

''(C) In the Senate, immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the Senate rules, the vote on final passage of the resolution shall occur.

''(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

''(5) If, before the passage in the Senate of a resolution described in paragraph (1), the Senate receives from the House of Representatives a resolution described in paragraph (1), then the following procedures shall apply:

''(A) The resolution of the House of Representatives shall not be referred to a committee.

''(B) With respect to a resolution described in paragraph (1) of the Senate—

''(i) the procedure in the Senate shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(6) This subsection is enacted by Congress—

''(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed to be a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''(j) No requirements under this chapter shall be subject to judicial review in any manner.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting after the item relating to chapter 7 the following:

''8. Congressional Review of Agency Rulemaking ..... 801''.

SEC. 5. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 3 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—No later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of chapters 5 and 6 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), as amended by section 3 of this Act; and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 6. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an nationally recognized scientific institution or scholarly organization—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—The Director shall ensure the arrangements under paragraph (1) provide that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process including opportunity for public to submit views, data, and analyses and to provide public comments on the results before making them final.

(C) the analysis is conducted by a balanced group of individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects and the selection of members for such study committee shall be at the discretion of the scientific body;

(D) the analysis is conducted, to the extent feasible and relevant, consistent with the risk assessment and risk characterization principles in section 634 of this title;

(E) the methodologies and principal scientific determinations made in the analysis are subjected to independent peer review, consistent with section 635 and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e); and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(G) Nothing in this subsection shall be construed to prevent the Director from entering into a sole-source arrangement with a nationally recognized scientific institution or scholarly organization.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) AGENCY.—The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(2) REGULATION.—The term ''regulation'' means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedures or practice requirements of an agency. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States; or

(C) regulations related to agency organization, management, or personnel.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Every 2 years, no later than June of the second year, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of Federal regulatory programs and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection no later than 2 years after the effective date of this Act and shall issue the first accounting statement in final form no later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the effective date of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of Federal regulatory programs by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for each regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government costs.

(C) An accounting statement shall estimate the benefits of Federal regulatory programs by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in human health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) The cumulative impact on the economy of Federal regulatory programs covered in the accounting statement. Factors to be considered in such report shall include impacts on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers and the agencies, develop guidance for the agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to this section and section 3 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect 180 days after the date of the enactment of this Act, but shall not apply to any agency rule for which a general notice of proposed rulemaking is published on or before such date.

DOMENICI AMENDMENT NO. 1582

(Ordered to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to amendment no. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At page 77, line 8, after ''rule'' and before '';'' insert the following: '', including whether it is a major rule''.

At page 77, line 11, after ''available'' and before ''to'' insert the following: ''to the Comptroller General, and, upon request,''.

At page 77, line 11, after ''Congress'', strike the following: ''and the Comptroller General, upon request''.

At page 78, line 12, after ''information'' and before ''relevant'' insert the following: ''the Comptroller General determines to be''.

At page 78, line 13, after ''subparagraph (A)'' and before ''.'' insert the following: ''at such times and in such form as the Comptroller General prescribes''.

At page 82, after line 12, insert the following new subsection:

''(4) The Comptroller General shall not be required to report on a rule described under paragraph (1) of this subsection unless so requested by a committee of jurisdiction of either House of Congress.''

ROTH AMENDMENTS NOS. 1583–1587

(Ordered to lie on the table.)

Mr. ROTH submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1583

On page 65, strike all from line 1 through line 15 on page 66 and insert in lieu thereof the following (and thereafter, renumber subsequent sections accordingly):

SUBCHAPTER IV—EXECUTIVE OVERSIGHT

§ 641. Procedures

(a) IN GENERAL.—The President shall, to the extent permitted by law—

(1) establish a process for the centralized review and coordination of Federal agency regulatory actions; and

(2) monitor, review, and ensure agency compliance with such process. Such review shall be conducted by and be the responsibility of the Director of the Office of Management and Budget, except to the extent that the President designates another reviewing entity to resolve conflicts, as provided under subsection (e).

(b) REGULATORY REVIEW.—For the purpose of carrying out the review established under subsection (a), the Director, not later than 12 months after the date of enactment of this subchapter, shall—

(1) develop and oversee uniform regulatory policies and procedures, including guidelines by which each agency shall prepare the cost-benefit analyses and risk assessments required by subchapter II and III. The guidelines shall—

(A) ensure that evaluations are consistent with subchapters II and III and, to the extent feasible, represent realistic and plausible estimates;

(B) be adopted following public notice and adequate opportunity for comment; and

(C) be used consistently by all agencies covered by this subchapter; and

(D) be reviewed, and when appropriate, revised at least every 4 years by the Director or designee of the President; and

(2) develop policies and procedures for regulatory review, including those by which the Director shall—

(A) designate current regulatory actions or existing rules for analysis and review in accordance with section 623; and

(B) review agency regulatory actions to ensure that they are consistent with applicable law, the purposes of this chapter, and the policies or actions of other agencies, including authority of the Director to—

(i) identify any agency regulatory actions that are duplicative, conflicting, or otherwise inconsistent with any law or policy or with the purposes of this chapter; and

(ii) return to the agency for further consideration any regulatory action in order to minimize or eliminate duplication, conflict, or inconsistency with any law or policy or with the purposes of this chapter.

(c) COMPLIANCE IN EMERGENCY SITUATIONS.—In emergency situations or when an agency is obligated by law to act more quickly than review procedures allow, the agency shall notify the Director or other reviewing entity as soon as possible and, to the extent practicable, comply with the requirements of this section. For those regulatory actions that are governed by a statutory or court imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for the Director or other reviewing entity to comply with the requirements of this section.

(d) REGULATORY ACTION REVIEW BEFORE PUBLIC AVAILABILITY.—Except to the extent required by law, each agency shall not public or otherwise issue to the public any regulatory action that is subject to review under this section until whichever of the following occurs first—

(1) the Director or other reviewing entity has waived review of the action, has completed review without any requests for further consideration under subsection (b)(2)(B), or otherwise approved publication; or

(2) the time period in Section 642(b) expires without the Director or other reviewing entity having notified the agency that it is returning the regulatory action for further consideration under subsection (b)(2)(B).

(e) RESOLUTION OF AGENCY CONFLICTS.—To the extent permitted by law, disagreements or conflicts between or among agencies or between the Director and an agency regarding regulatory actions or regulatory review that cannot be resolved by the Director, shall be resolved by the President, or by a reviewing entity designated by the President, as provided under subsection (a). Any review undertaken as provided under this subsection shall be in accordance with other requirements of law.

§ 642. Promulgation and adoption

(a) PUBLIC COMMENT.—Procedures established pursuant to section 641 shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

(b) TIME FOR REVIEW.—(1) If procedures established pursuant to section 641 include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President, or by an officer to whom the authority granted under section 641 has been delegated pursuant to section 643.

(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President, or such officer.

(3)(A) To the extent permitted by law and any applicable schedule issued under section 623, the times for each such review may be extended for good cause by the Director for a definite period of time.

(B) Notice of any such extension together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

AMENDMENT NO. 1584

Add a new section 637 to Subchapter III as follows:

SEC. 637. INTERAGENCY COORDINATION.

''(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall—

''(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

''(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

''(3) establish appropriate interagency mechanisms to promote—

''(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

''(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

''(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

''(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

''(b) The President shall appoint National Peer Review Panels to review every 3 years the risk assessment practices of each covered agency for programs designed to protect human health, safety, or the environment. The Panels shall submit a report to the President and the Congress at least every 3 years containing the results of such review.

AMENDMENT NO. 1585

On page 35, line 23, after ''(3)'', strike ''(A)'';

On page 35, line 23, strike ''least cost'' and insert in lieu thereof ''most cost-effective'';

On page 35, line 25, strike ''; or'' and insert in lieu thereof a period;

On page 36, strike lines 1 through 21 in their entirety.

On page 37, line 6, after ''(2)'', strike ''(A)'';

On page 37, line 6, strike ''least cost'' and insert in lieu thereof ''most cost-effective'';

On page 37, line 8, strike ''; or'' and insert in lieu thereof a period;

On page 37, strike lines 9 through page 38, line 5.

AMENDMENT NO. 1586

On page 35, line 23, strike lines 23 through 25 and insert in lieu thereof ''the rule adopts the alternative with greater net benefits than the reasonable alternatives that achieve the objectives of the statute.

On page 36, strike lines 1 through 21 in their entirety.

On page 37, insert ''and'' at the end of line 5.

On page 37, strike lines 6 through 8 and insert in lieu thereof ''the rule adopts the alternative with the least net cost of the reasonable alternatives that achieve the objectives of the statute.''

AMENDMENT NO. 1587

On page 21, between lines 10 and 11, insert the following:

''(A)(i) if a risk assessment is required under subchapter III, the analysis shall summarize the nature and magnitude of the risk identified pursuant to subchapter III and explain how and to what extent such risk is reduced by the proposed rule;''.

On page 21, line 11, strike ''(A)'' and insert in lieu thereof ''(A)(ii)''.

CHAFEE AMENDMENT NO. 1588

(Ordered to lie on the Table.)

Mr. CHAFEE submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 75, line 1, strike the following:

''(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or

and redesignate the following subparagraph as ''(F)''.

On page 75, after line 12, insert the following:

''(c) In making a finding under subsection (a)(2)(A) of this section, the court shall determine whether the factual basis of a rule adopted in a proceeding subject to section 553 of this title is without substantial support in the rulemaking file.''

ROTH AMENDMENT NO. 1589

(Ordered to lie on the table.)

Mr. ROTH submitted an amendment intended to be proposed by him to amendment no. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 75, line 1, strike the following:

''(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or'' and redesignate the following subparagraph as ''(F)''.

CHAFEE AMENDMENTS NOS. 1590–1591

(Ordered to lie on the table.)

Mr. CHAFEE submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1590

Beginning on page 59, line 10, strike all through page 60, line 23 (the proposed section 634 on petition for review of a major free-standing risk assessment).

AMENDMENT NO. 1591

On page 40, line 11, strike ''5-year'' and insert ''2-year''.

On page 40, line 16, strike ''2 years'' and insert ''6 months''.

On page 40, line 21, strike ''5-year'' and insert ''2-year''.

On page 41, line 1, strike ''2 years'' and insert ''6 months''.

On page 41, line 5, strike ''5-year'' and insert ''2-year''.

On page 41, line 11, strike ''2 years'' and insert ''6 months''.

CHAFEE (AND LIEBERMAN) AMENDMENT NO. 1592

(Ordered to lie on the table.)

Mr. CHAFEE (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 38, line 14, strike all through page 40, line 7 (the proposed section 625 on jurisdiction and judicial review), and insert in lieu thereof the following:

SEC. 625. JUDICIAL REVIEW.

''(a) Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall not be subject to judicial review except in connection with review of a final agency rule and according to the provisions of this section.

''(b) Any determination by a designee of the President or the Director that a rule is, or is not, a major rule shall not be subject to judicial review in any manner.

''(c) The determination by an agency that a rule is, or is not, a major rule shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination.

''(d) If the cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration. If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

''(e) Any cost-benefit analysis or risk assessment prepared under this chapter shall not be subject to judicial consideration separate or apart from review of the agency action to which it relates. When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.''.

CHAFEE AMENDMENTS NOS. 1593–1595

(Ordered to lie on the table.)

Mr. CHAFEE submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1593

Amend section 621 of title 5, United States Code, as added by section 4(a) by inserting after paragraph (5), the following new paragraph:

''(6) The term 'major rule' does not include a rule that approves, in whole or in part, a plan or program adopted by a State that provides for the implementation, maintenance, or enforcement of Federal standards or requirements;''.

AMENDMENT NO. 1594

On page 36, beginning at line 11, strike all through line 21 (the proposed paragraph (4) on reducing risks).

Beginning on page 37, line 19, strike all through page 38, line 5 (the proposed paragraph (3) on reducing risks).

AMENDMENT NO. 1595

On page 25, after line 6, insert the following new paragraph:

''(3) No numerical estimate of benefits prepared pursuant to this subchapter shall in any way discount the value of benefits expected to be experienced in the future.''

CHAFEE AMENDMENT NO. 1596

(Ordered to lie on the table.)

Mr. CHAFEE submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 35, line 9, strike all through page 38, line 13 (the proposed section 624 on decisional criteria) and insert in lieu thereof the following:

''SECTION 624. DECISIONAL CRITERIA.

''(a) CONSTRUCTION WITH OTHER LAWS.—If, with respect to any action to be taken by a Federal agency, it is not possible for the agency to comply both with the provisions of this section and the provisions of other law, the provisions of this section shall not apply to the action.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(iii); and

''(3)(A) there is no other reasonable alternative that provides equal or greater benefits at less cost; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits.

''(c) ALTERNATIVE REQUIREMENTS.—If an agency head has a nondiscretionary duty to promulgate a rule that cannot satisfy one or more of the criteria established by subsection (b), the agency head shall promulgate the rule ensuring that the remaining criteria of subsection (b) are satisfied.

''(d) PUBLICATION OF THE REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency is required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.''

STEVENS AMENDMENTS NOS. 1597–1603

(Order to lie on the table.)

Mr. STEVENS submitted seven amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1597

On page 19, strike lines 5 through 7 and insert in lieu thereof the following:

''78aaa et seq.);

''(xii) a rule that involves the international trade laws of the United States;

''(xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by Section 2 * * * of the Water Quality Standards Act of 1992);''.

''(xiv) a rule that allocates resources or promotes competition among industry sectors, such as a rule to establish catch limits pursuant the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or to require interconnection among common carriers pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

''(xv) a rule that involves hunting under the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

AMENDMENT NO. 1598

On page 19, beginning on line 16, strike all through page 20, line 6, and insert in lieu thereof the following:

''(1) whether the rule is or is not a major rule within the meaning of section 621(5)(A)(i) or 621(5)(C), or has been designated a major rule under section 621(5); and

''(2) if the agency determines that the rule is a major rule, whether the rule requires or does not require the preparation of a risk assessment under section 632(a).

''(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A)(i) or 621(5)(C), the President may determine that the rule is a major rule or designate''.

AMENDMENT NO. 1599

On page 20, beginning on line 23, strike all through page 21, line 4, and insert in lieu thereof the following:

''(B)(i) When the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.''

AMENDMENT NO. 1600

On page 14, strike lines 3 through 17 and insert in lieu thereof the following:

plexity of the decision and any need for expedition.

''(5) the term 'major rule' means—

''(A) a rule or set of closely related rules that the agency proposing the rule or the President determines is likely to have a gross annual effect on the economy of $100,000,000 or more in reasonably quantifiable increased costs (and this limit my be adjusted periodically by the Director, at the Director's sole discretion, to account for inflation);

''(B) a rule that is otherwise designated a major rule by the President (and designation or failure to designate under this clause shall not be subject to judicial review); or

''(C) any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

''(6) the term 'market-based mechanism' means—.

AMENDMENT NO. 1601

On page 3, line 7, strike ''dures.'' and insert in lieu thereof ''dures established by law or practice for the internal procurement or administrative functions of that agency.''

AMENDMENT NO. 1602

On page 12, beginning with ''(1)'' on line 13, strike all through ''(2)'' on line 18.

AMENDMENT NO. 1603

On page 48, line 7, strike ''this subchapter.'' and insert in lieu thereof ''this

subchapter. For the purposes of this subchapter, the term 'protection of the environment' shall not include any rule to manage the harvest of fish or game.''.

HATCH AMENDMENTS NOS. 1604–1608

(Order to lie on the table.)

Mr. HATCH submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1604

On page 38, strike lines 6 through 13, and insert in lieu thereof the following:

''(d) To the maximum extent possible, and consistent with the policy goals of this subchapter, agency discretion under existing statutes shall be construed broadly to require the agency to identify and select reasonable alternatives that satisfy subsection (b) and maximize net benefits.

''(e) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.''.

AMENDMENT NO. 1605

On page 35, strike lines 23 through 25 and insert in lieu thereof the following:

''(3)(A) the rule adopts the alternative that achieves the greater net benefits of the reasonable alternatives that achieve the objectives of the statute; or''.

AMENDMENT NO. 1606

On page 36, strike lines 1 through 21.

AMENDMENT NO. 1607

On page 37, strike lines 6 through 8, and insert in lieu thereof the following:

''(2)(A) the rule adopts the alternative that achieves the least net cost of the reasonable alternatives that achieve the objectives of the statute; or''.

AMENDMENT NO. 1608

On page 37, strike lines 9 through 25 and on page * * *, lines 1 through 5.

CRAIG AMENDMENTS NOS. 1609–1610

(Ordered to lie on the table.)

Mr. HATCH (for Mr. CRAIG) submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1609

On page 27, line 20, strike the number ''11'', and insert the number ''7''.

AMENDMENT NO. 1610

On page 27, line 5, strike the number ''11'', and insert the number ''7''.

LIEBERMAN AMENDMENT NO. 1611

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 44, beginning with line 14, strike all through line 4 on page 46 and insert in lieu thereof the following:

''§ 629. Petition for alternative method of compliance

''(a) Except as provided in subsection (j) or unless prohibited by the statute authorizing a rule, any person subject to a rule may petition the relevant agency implementing the rule to modify or waive the specific requirements of a rule and to authorize an alternative compliance strategy satisfying the criteria of subsection (b).

''(b) Any petition submitted under subsection (a) shall—

''(1) identify with reasonable specificity the requirements for which the modification or waiver is sought and the alternative compliance strategy being proposed;

''(2) identify the facility to which the modification or waiver would pertain;

''(3) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, demonstrate that the alternative compliance strategy, from the standpoint of the applicable human health, safety, and environmental benefits, taking into account an environmental media, will achieve—

''(A) a significantly better result than would be achieved through compliance with the rule; or

''(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule; and

''(4) demonstrate that the proposed alternative compliance strategy provides a degree of accountability, enforceability, and public and agency access to information at least equal to that of the rule.

''(c) No later than the date on which the petitioner submits the petition to the agency, the petitioner shall inform the public of the submission of such petition (including a brief description of the petition) through publication of a notice in newspapers of general circulation in the area in which the facility is located. The agency may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide public notice and opportunity to comment.

''(d) The agency may approve the petition upon determining that the proposed alternative compliance strategy—

''(1) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, from the standpoint of the applicable public health, safety, and environmental benefits, taking into account all environmental media, will achieve—

''(A) a significantly better result than would be achieved through compliance with the rule; or

''(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule;

''(2) will provide a degree of accountability, enforceability, and public and agency access to information at least equal to that provided by the rule;

''(3) will not impose an undue burden on the agency that would be responsible for administering and enforcing such alternative compliance strategy; and

''(4) satisfies any other relevant factors.

''(e) Where relevant, the agency shall give priority to petitions with alternative compliance strategies using pollution prevention approaches.

''(f) In making determinations under subsection (d), the agency shall take into account any relevant cross-media effects of the proposed alternative compliance strategy, and whether the proposed alternative compliance strategy would transfer any significant health, safety, or environmental effects to other geographic locations, future generations, or classes of people.

''(g) Any alternative compliance strategy for which a petition is granted under this section shall be enforceable as if it were a provision of the rule being modified or waived.

''(h) The grant of a petition under this section shall be judicially reviewable as if it were the issuance of an amendment to the rule being modified or waived. The denial of a petition shall not be subject to judicial review.

''(i) No agency may grant more than 30 petitions per year under this section.

''(j) If the statute authorizing the rule that is the subject of the petition provides procedures or standards for an alternative method of compliance, the petition shall be reviewed solely under the terms of the statute.

CHAFEE (AND LIEBERMAN) AMENDMENT NO. 1612

(Ordered to lie on the table.)

Mr. CHAFEE (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 23, strike lines 1 through 3.

On page 23, strike lines 17 through 19, and insert in lieu thereof:

''(B) if not expressly or implicitly inconsistent with the statute under which the agency is acting, a reasonable determination, based on the rulemaking file considered as a whole, whether—

''(i) the benefits of the rule justify the costs of the rule; and

''(ii) the rule will achieve the rulemaking objectives in a more cost-effective manner than the alternatives described in the rulemaking, including the market-based mechanisms identified under subsection (c)(2)(C)(iii)''.

On page 25, insert between lines 22 and 23:

''(g) CERTIFICATION OF ANALYSIS.—Each agency shall, consistent with Chapter 5 and other applicable law, provide in any proposed or final rulemaking notice published in the Federal Register—

''(1) a certification of compliance with the requirements of this chapter, or an explanation why such certification cannot be made; and

''(2) a certification that the rule will produce benefits that will justify the cost to the Government and to the public implementation of, and compliance with, the rule, or an explanation why such certification cannot be made.

On page 26, lines 16–17, strike ''the decisional criteria of section 624'' and insert in lieu thereof: ''the determination made in section 622(d)(2)(B)''.

On page 28, line 22, strike ''the findings required by section 624'' and insert in lieu thereof: ''the determination made in section 622(d)(2)(B)''.

On page 29, lines 22 through 23, strike ''the decisional criteria under section 624'' and insert in lieu thereof: ''the determination made in section 622(d)(2)(B)''.

On page 32, line 18, strike ''the decisional criteria of section 624'' and insert in lieu thereof: ''the determination made in section 622(d)(2)(B)''.

On page 33, lines 11 through 12, strike ''the decisional criteria of section 624'' and insert in lieu thereof: ''the determination made in section 622(d)(2)(B)''.

On page 35, line 9, through page 38, line 13, strike entire section 624, and renumber sections accordingly.

On page 44, strike lines 8 through 13.

LIEBERMAN (AND CHAFEE) AMENDMENT NO. 1613

(Ordered to lie on the table.)

Mr. LIEBERMAN (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 97, after line 7, insert the following:

''SEC. 10. HUMAN HEALTH, SAFETY AND THE ENVIRONMENT.—Nothing in this Act shall be construed to revise, amend or in any fashion weaken the requirements or criteria of any statute protecting human health, safety or the environment, including the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act or the Resource Conservation and Recovery Act, or any amendments thereto.''

KENNEDY AMENDMENT NOS. 1614–1626

(Ordered to lie on the table.)

Mr. KENNEDY submitted 13 amendments intended to be proposed by him to amendment no. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1614

On page 71, strike out lines 13 through 23.

AMENDMENT NO. 1615

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) SENSE OF THE SENATE REGARDING REFORM OF THE DELANEY CLAUSE.—It is the sense of the Senate that—

(1) the Delaney Clause in the Federal Food, Drug, and Cosmetic Act governing carcinogens in foods must be reformed;

(2) any such reform of the Delaney Clause—

(A) should reflect the care and deliberativeness due to a subject as important as whether and to what extent infants and children shall be exposed to carcinogens through the good they consume; and

(B) should not undermine other safety standards.

(3) advances in science and technology since the Delaney Clause was originally enacted in 1958 have prompted the need to refine the standards in current law with respect to pesticide residues, and may have limited the appropriateness of such standards with respect to food additives and animal drugs;

(4) the Delaney Clause should be replaced by a contemporary health-based standard that takes into account—

(A) the right of the American people to safe food;

(B) the conclusions of the National Academy of Sciences concerning the special susceptibility of infants and children to the effects of pesticide chemicals and the cumulative effect of the residues of such pesticide chemicals on human health;

(C) the importance of a stable food supply and a sound agricultural economy; and

(D) the interests of consumers, farmers, food manufacturers, and other interested parties; and

(5) prior to the end of the first session of the 104th Congress, after appropriate consideration by the committees of jurisdiction, the Senate should enact legislation to reform the Delaney Clause.

AMENDMENT NO. 1616

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO THE SAFETY OF FOOD.—

(1) TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES.—Section 408(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(b)) is amended—

(A) buy striking ''and (3) to the opinion'' and inserting ''(3) to the opinion''; and

(B) by striking the period at the end of the second sentence and inserting the following: ''; and (4) to the susceptibility of infants and children to the effects of pesticide chemicals and the residues of such pesticide chemicals.''.

(2) FOOD ADDITIVES.—

(A) IN GENERAL.—Section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)) is amended to read as follows:

''(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: *Provided*, That no additive shall be deemed to be safe if such additive is found to induce cancer when ingested by man or animal, or if such additive is found, after tests that are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal, except that this proviso shall not apply with respect to—

''(i) the use of a substance as an ingredient of feed for animals that are raised for food production if the Secretary finds that—

''(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such additive will not adversely affect the animal for which such feed is intended; and

''(II) there are no residues of the additive as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal;

''(ii) the use of any substance in food (except the use of a substance as an ingredient of feed for animals that are raised for food production) that the Secretary, by regulation (which regulations shall not be subject to subsections (f) and (g)) finds that the petitioner has shown, based on clear and convincing scientifically valid data, that—

''(I) the amount of the additive that is present in food as a result of the intended uses of such additive will be insignificant; and

''(II) the amount of the additive that is present in food as a result of the intended uses of such additive will present no risk to the public health;

''(iii) the use of any substance in food if the Secretary finds that the petitioner has shown, based on clear and convincing scientifically valid data, that the additive induces cancer in animals through mechanisms that do not operate in humans and, therefore, that the additive would be reasonably anticipated not to cause cancer in humans; or

''(iv) a residue of a pesticide chemical; or''.

(B) ADDITIONAL ASSESSMENT CONSIDERATIONS.—Section 409(c)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(5)), as amended by subparagraph (A), is further amended—

(i) in subparagraph (B), by striking ''and'' at the end thereof;

(ii) in subparagraph (C), by striking the period at the end thereof and inserting ''; and''; and

(iii) by adding at the end thereof the following new subparagraph:

''(D) the susceptibility of infants and children to the effects of residues of pesticide chemicals.''.

(3) NEW ANIMAL DRUGS.—Section 512(d)(1)(I) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d)(1)) is amended to read as follows:

''(I) such drug induces cancer when ingested by man or animal, or, after tests that are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal, except that this subparagraph shall not apply with respect to—

''(i) such drug if the Secretary finds that—

''(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such drug will not adversely affect the animal for which such drug is intended; and

''(II) there are no residues of such drug as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal; or

''(ii) such drug if the Secretary finds that the applicant has shown, based on clear and convincing scientifically valid data, that such drug or the residues of such drug induce cancer in animals through mechanisms that do not operate in humans and, therefore, that neither such drug nor the residues of such drug would be reasonably anticipated to cause cancer in humans;''.

AMENDMENT NO. 1617

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO THE SAFETY OF FOOD.—

(1) FOOD ADDITIVES.—

(A) IN GENERAL.—Section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)) is amended to read as follows:

''(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: *Provided*, That no additive shall be deemed to be safe if such additive is found to induce cancer when ingested by man or animal, or if such additive is found, after tests that are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal, except that this proviso shall not apply with respect to—

''(i) the use of a substance as an ingredient of feed for animals that are raised for food production if the Secretary finds that—

''(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such additive will not adversely affect the animal for which such feed is intended; and

''(II) there are no residues of the additive as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal;

''(ii) the use of any substance in food (except the use of a substance as an ingredient of feed for animals that are raised for food production) that the Secretary, by regulation (which regulations shall not be subject to subsections (f) and (g)) finds that the petitioner has shown, based on clear and convincing scientifically valid data, that—

''(I) the amount of the additive that is present in food as a result of the intended

uses of such additive will be insignificant; and

''(II) the amount of the additive that is present in food as a result of the intended uses of such additive will present no risk to the public health;

''(iii) the use of any substance in food if the Secretary finds that the petitioner has shown, based on clear and convincing scientifically valid data, that the additive induces cancer in animals through mechanisms that do not operate in humans and, therefore, that the additive would be reasonably anticipated not to cause cancer in humans; or

''(iv) a residue of a pesticide chemical; or''.

(B) ADDITIONAL ASSESSMENT CONSIDERATIONS.—Section 409(c)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(5)), as amended by subparagraph (A), is further amended—

(i) in subparagraph (B), by striking ''and'' at the end thereof;

(ii) in subparagraph (C), by striking the period at the end thereof and inserting ''; and''; and

(iii) by adding at the end thereof the following new subparagraph:

''(D) the susceptibility of infants and children to the effects of residues of pesticide chemicals.''.

(2) NEW ANIMAL DRUGS.—Section 512(d)(1)(I) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d)(1)) is amended to read as follows:

''(I) such drug induces cancer when ingested by man or animal, or, after tests that are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal, except that this subparagraph shall not apply with respect to—

''(i) such drug if the Secretary finds that—

''(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such drug will not adversely affect the animal for which such drug is intended; and

''(II) there are no residues of such drug as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal; or

''(ii) such drug if the Secretary finds that the applicant has shown, based on clear and convincing scientifically valid data, that such drug or the residues of such drug induce cancer in animals through mechanisms that do not operate in humans and, therefore, that neither such drug nor the residues of such drug would be reasonably anticipated to cause cancer in humans;''.

AMENDMENT NO. 1618

On page 19, between lines 7 and 8, insert the following new clause:

''( ) a rule or agency action relating to performance standards for electrical wires that connect patients to medical devices''.

AMENDMENT NO. 1619

On page 44, after line 13, strike section 629.

AMENDMENT NO. 1620

On page 14, between lines 16 and 17, insert the following:

''(6) the term 'major rule' does not include a rule the primary purpose of which is to protect the special health needs of women.

On page 49, line 21, strike ''or''.

On page 50, line 2, strike the period at the end and insert ''; or''.

On page 50, between lines 2 and 3, insert the following:

''(F) a rule or agency action the primary purposes of which is to protect the special health needs of women.

On page 88, strike lines 15 through 19 and insert the following:

''§ 807. Exemptions.

''Nothing in this chapter shall apply to rules—

''(1) that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee; or

''(2) the primary purposes of which is to protect the special health needs of women.''.

AMENDMENT NO. 1621

On page 14, between lines 16 and 17, insert the following:

''(6) the term 'major rule' does not include a rule the primary purpose of which is to protect the health and safety of children.

On page 49, line 21, strike ''or''.

On page 50, line 2, strike the period at the end and insert ''; or''.

On page 50, between lines 2 and 3, insert the following:

''(F) a rule or agency action the primary purposes of which is to protect the health or safety of children.

On page 88, strike lines 15 through 19 and insert the following:

''§ 807. Exemptions.

''Nothing in this chapter shall apply to rules—

''(1) that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee; or

''(2) the primary purposes of which is to protect the health or safety of children''.

AMENDMENT NO. 1622

On page 16, line 16, insert ''or removal from'' after ''into''.

AMENDMENT NO. 1623

On page 49, line 12, insert ''or removal from'' after ''into''.

AMENDMENT NO. 1624

On page 49, line 17, insert ''compliance activities, educational and guidance documents,'' after ''permit,''.

AMENDMENT NO. 1625

On page 46, insert between lines 4 and 5 the following:

''§ 629A. Inapplicability to mine safety and health regulations

''This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to mine safety and health.

On page 50, insert between lines 15 and 16 the following new paragraph:

''(4) This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to mine safety and health.

On page 96, insert between lines 20 and 21 the following new section:

SEC. . MINE SAFETY AND HEALTH REGULATIONS.

The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) is amended by inserting after section 101 the following new section:

''RISK ASSESSMENTS FOR FINAL STANDARDS

''SEC. 101a. (a) In promulgating any final mine safety and health regulation or standard, the Secretary shall publish in the Federal Register—

''(1) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

''(2) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

''(3) a certification that—

''(A) the estimate under paragraph (1) and the analysis under paragraph (2) are—

''(i) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

''(ii) supported by the best available scientific data;

''(B) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

''(C) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

''(b) If the Secretary cannot make the certification required under subsection (a)(3), the Secretary shall—

''(1) notify the Congress concerning the reasons why such certification cannot be made; and

''(2) publish a statement of such reasons with the final regulation or standard.

''(c) Nothing in this section shall be construed to grant a cause of action to any person.''.

AMENDMENT NO. 1626

On page 25, between lines 22 and 23, insert the following:

''(g) EXEMPTION FOR RULE OR AGENCY ACTION RELATING TO THE SAFETY OR BLOOD SUPPLY.—None of the provisions of this subchapter or subchapter III shall apply to any rule or agency action intended to ensure the safety, efficacy, or availability of blood, blood products, or blood-derived products.

LEVIN AMENDMENTS NOS. 1627–1649

(Ordered to lie on the table.)

Mr. LEVIN submitted 23 amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1627

On page 75, strike lines 1 through 5 and renumber accordingly.

On page 8, line 12, strike ''substantially.''

AMENDMENT NO. 1628

On page 19, between lines 7 and 8, insert the following new subparagraph:

''(xiii) a rule or agency action of the Federal Election Commission or a rule or agency action issued under section 315 and section 312(a)(7) of the Federal Communications Act of 1934.''

AMENDMENT NO. 1629

On page 3, line 2, strike ''or''.

On page 3, line 7, strike the period and insert the following: ''; or

''(5) a rule relating to government loans, grants or benefits.''

AMENDMENT NO. 1630

On page 57, line 25, strike ''such person;'' and insert ''such person or an employer of such person;''

AMENDMENT NO. 1631

On page 21, line 25, insert between ''of'' and ''reasonable'' the following: ''a reasonable number of''.

On page 23, line 11, insert between ''and of'' and ''the'' the following: ''a reasonable number of''.

AMENDMENT NO. 1632

On page 39, line 18, strike subsection (e).

AMENDMENT NO. 1633

On page 36, line 2, strike ''nonquantifiable''.

On page 36, line 10, strike ''; and'' and substitute ''.''

On page 36, line 11, strike paragraph (4).

On page 37, line 10, strike ''nonquantifiable''.

On page 37, at the end of line 5, insert ''and''.

On page 37, line 18, strike ''; and'' and insert ''.''.

On page 37, line 19, strike paragraph (3).

AMENDMENT NO. 1634

On page 22, line 19, after ''scientific evaluations,'' insert ''cost estimates,''.

On page 22, line 24, after ''scientific evaluation,'' insert ''cost estimate,''.

AMENDMENT NO. 1635

On page 16, lines 15 and 16, strike ''a rule or agency action that authorizes the introduction into'' and substitute ''the introduction into or removal from''.

On page 16, line 25, strike ''or that provides relief, in whole or in part, from a statutory prohibition,'' and all that follows through page 17, line 4.

On page 49, line 11, strike ''a rule or agency action that authorizes the introduction into'' and substitute ''the introduction into or removal from''.

AMENDMENT NO. 1636

On page 8, line 12, strike ''substantially''.

AMENDMENT NO. 1637

On page 3, line 25, strike ''text of''.

On page 4, line 2, strike ''text of''.

On page 8, line 3, strike ''text of''.

On page 8, line 5, strike ''text of''.

AMENDMENT NO. 1638

On page 57, line 11, insert after the word ''panels'' the following: ''or reports which have been subject to peer review''.

AMENDMENT NO. 1639

On page 58, line 24, strike everything through page 59, line 3.

AMENDMENT NO. 1640

On page 57, line 11, insert after the word ''panels'' the following: ''or reports which have been subject to peer review''.

AMENDMENT NO. 1641

On page 40, line 8, strike everything through page 41, line 12, and insert the following:

SEC. 626. DEADLINES FOR RULEMAKING.

''(a) All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(b) All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(c) In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

AMENDMENT NO. 1642

On page 75, strike lines 1 through 5 and renumber accordingly.

AMENDMENT NO. 1643

On page 57, line 25, strike ''such person;'' and insert ''such person or an employer of such person;''

AMENDMENT NO. 1644

On page 14, strike out line 11 and all that follows through line 18 and substitute the following:

''(B) any other rule that is—

''(i) otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President; or

''(ii) designated a major rule by the Chief Counsel for Advocacy of the Small Business Administration with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, or solely by the Administrator of the Office of Information and Regulatory Affairs, pursuant to the designation procedures established in paragraphs (e)(2) and (3) of section 623,

provided that a designation or failure to designate under this clause shall not be subject to judicial review;

''(6) the term 'market-based mechanism' means a regulatory program that—''.

AMENDMENT NO. 1645

On page 33, at the end of line 13, insert ''or repeal''.

On page 33, line 17, strike ''or repeal''.

On page 34, line 11, after ''to amend'', insert ''or repeal''.

On page 34, line 17, after ''modify'' insert ''or repeal''.

On page 34, line 24, strike ''the head of the agency'' and all that follows through the end of the sentence and insert in lieu thereof the following:

''the rule shall be subject to the congressional disapproval procedure under section 802 as of the date of the deadline, and shall terminate by operation of law upon the enactment of a joint resolution of disapproval pursuant to such section.''.

AMENDMENT NO. 1646

On page 15, line 18, strike paragraph (8) and substitute the following:

''(8) the term 'reasonable alternatives' means a reasonable number of significant alternatives proposed by the agency or by persons commenting on a proposed rule, which the agency has authorization to consider under its permissible interpretation of the statue, including flexible regulatory options described in section 622(c)(2)(c)(iii), unless precluded by the statute granting the rulemaking authority.''

AMENDMENT NO. 1647

On page 25, beginning with line 23, strike out all through line 8 on page 35 and insert in lieu thereof the following:

''§ 623. Agency regulatory review

''(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

''(2) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) In selecting rules and establishing deadlines for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

''(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) the benefits of the rule do not justify its costs or the rule does not achieve the rulemaking objectives in a cost-effective manner;

''(c) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

''(D) the importance of each rule relative to other rules being reviewed under this section; or

''(E) the resources expected to be available to the agency to carry out the reviews under this section.

''(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

''(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (a)(3) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) The head of the agency shall modify the agency's schedule under this section to reflect any change contained in an appropriations Act under subsection (d).

''(c) JUDICIAL REVIEW.—(1) Notwithstanding section 623 and except as provided otherwise in this subsection, judicial review of agency action taken pursuant to the requirements of this section shall be limited to review of compliance or noncompliance with the requirements of this section.

''(2) Agency decisions to place, or decline to place, a rule on the schedule, and the deadlines for completion of a rule, shall not be subject to judicial review.

''(d) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

''(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

''(B) include a list of rules which may be subject to subsection (e)(3) during the year for which the budget proposal is made.

''(2) Amendments to the schedule under subsection (b) to place a rule on the schedule for review or change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may recommend, to the House of Representatives or Senate appropriations committee (as the case may be), such amendments. The appropriations committee to which such amendments have been submitted may include the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

''(e) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

''(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

''(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

''(i) addresses public comments generated by the notice in subparagraph (A);

''(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether the benefits of the rule justify its costs;

''(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

''(iv) solicits public comment on the preliminary determination for the rule; and

''(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

''(i) addresses public comments generated by the notice in subparagraph (B); and

''(ii) contains a final determination of whether to continue, amend, or repeal the rule;

''(iii) if the agency determines to continue the rule and the rule is a major rule, describes a final analysis as to whether the benefits of the rule justify its costs; and

''(iv) if the agency determines to amend or repeal the rule, contains a notice of proposed rulemaking under section 553.

''(2) If the final determination of the agency is to continue the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

''(3) If the final determination of the agency is to continue the rule, and the agency has concluded that the benefits do not justify the costs, the agency shall transmit to the appropriate committees of Congress the cost-benefit analysis and a statement of the agency's reasons for continuing the rule.

''(f) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend or repeal a major rule under subsection (e)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (e)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

''(g) COMPLETION OF REVIEW OR REPEAL OF RULE.—If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 of this title to repeal the rule and shall complete such rulemaking within 2 years of the deadline established under subsection (b).

''(h) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue a rule under subsection (e)(1)(C) shall be considered final agency action.

''(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (g) by the date established under such subsection shall be subject to judicial review pursuant to section 706(1) of this title.''.

AMENDMENT NO. 1648

On page 11, strike lines 5 through line 19.

On page 12, strike line 9 through line 12.

On page 59, strike lines 10 and all that for follows through page 60, line 23.

On page 44, strike line 14 and all that follows through page 46, line 4.

AMENDMENT NO. 1649

On page 39, lines 11 and 12, strike ''failure to comply with'' and insert in lieu thereof ''any analysis or assessment pursuant to''.

GLENN AMENDMENTS NOS. 1650–1652

(Ordered to lie on the table.)

Mr. GLENN submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1650

On page 1, line 5, through page 12, line 21, strike all text.

AMENDMENT NO. 1651

Strike page 67, lines 1–18.

AMENDMENT NO. 1652

On page 35, strike out all from line 10 through page 38, line 5, and insert in lieu thereof the following:

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisions criteria otherwise provided by law, and in the event of conflict, the statute under which the rule is promulgated shall govern.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3)(A) there is no other reasonable alternative that provides equal or greater benefits at less cost that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits; and

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

''(2)(A) there is no other reasonable alternative that provides equal or greater benefits at less cost that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits.''

GLENN (AND LEVIN) AMENDMENTS NOS. 1653–1658

(Ordered to lie on the table.)

Mr. GLENN (for himself and Mr. LEVIN) submitted six amendments intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1653

On page 52:

Lines 9 through 10, strike ''that are reasonably expected to be encountered''.

Strike line 4 and insert in lieu thereof, ''shall consider in each risk assessment sound, reasonably''

Line 15 insert '', where appropriate,'' after ''consider''.

On page 53:

Line 4, insert ''material'' before ''conflicts''.

Line 7, strike ''emphasizing'' and insert ''including''.

Line 8, strike ''the most''.

Lines 12 through 13, strike ''the greatest'' and insert in lieu thereof ''sound''.

On page 54, line 1, after ''(1)'' insert ''To the extent feasible and scientifically appropriate.''

On page 56, line 10, strike ''the reasonably expected risk'' and insert in lieu thereof ''the range and distribution of risk''.

AMENDMENT NO. 1654

On page 16, line 16, insert ''or removal from'' after ''the introduction into''.

On page 49, line 12, insert ''or removal from'' after ''the introduction into''.

On page 50, strike lines 6 through 9.

AMENDMENT NO. 1655

On page 46 between lines 11 and 12, insert the following:

''(2) the term ''covered agency'' means—

''(A) the Secretary of Defense, for major rules relating to the programs and responsibilities of the United States Army Corps of Engineers;

''(B) the Secretary of the Interior, for major rules relating to the programs and responsibilities of the Office of Surface Mining Reclamation and Enforcement;

''(C) the Secretary of Agriculture, for major rules relating to the programs and responsibilities of—

''(i) the Animal and Plant Health Inspection Service;

''(ii) the Grain Inspection, Packers, and Stockyards Administration;

''(iii) the Food Safety and Inspection Service;

''(iv) the Forest Service; and

''(v) the Natural Resources Conservation Service;

''(D) the Secretary of Commerce, for major rules relating to the programs and responsibilities of the National Marine Fisheries Service;

''(E) the Secretary of Labor, for major rules relating to the programs and responsibilities of—

''(i) the Occupational Safety and Health Administration; and

''(ii) the Mine Safety and Health Administration;

''(F) the Secretary of Health and Human Services, for major rules relating to the programs and responsibilities assigned to the Food and Drug Administration;

''(G) the Secretary of Transportation, for major rules relating to the programs and responsibilities assigned to—

''(i) the Federal Aviation Administration; and

''(ii) the National Highway Traffic Safety Administration;

''(H) the Secretary of Energy, for major rules relating to nuclear safety, occupational safety and health, and environmental restoration and waste management;

''(I) the Chairman of the Consumer Product Safety Commission;

''(J) the Administrator of the Environmental Protection Agency; and

''(K) the Chairman of the Nuclear Regulatory Commission.

On page 48, line 3, strike ''an'' and insert ''a covered'';

On page 48, line 9, after ''each'' insert ''covered'';

On page 48, line 18, after ''each'' insert ''covered''.

AMENDMENT NO. 1656

On page 67, beginning on line 19, strike out all through page 71, line 12, and insert in lieu thereof—

(b) REGULATORY FLEXIBILITY ACT JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

''SEC. 611. JUDICIAL REVIEW.

''(a)(1) Except as provided in paragraph (2), not later than the end of the 120 day period beginning on the date of publication of a final rule with respect to which an agency—

''(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

''(B) prepared a final regulatory analysis pursuant to section 604;

an affected small entity may petition for the judicial review of such certification, or analysis in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

''(2)(A) Except as provided in subparagraph (B), in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 120-day period provided in paragraph (1), such lesser period shall apply to a petition for judicial review under this subsection.

''(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this title, a petition for judicial review under this subsection shall be filed not later than—

''(i) 120 days after the date the analysis is made available to the public; or

''(ii) in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 120-day period provided in paragraph (1), the number of days specified in such provision of law that is after the date the analysis is made available to the public.

''(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

''(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

''(5)(A) In the case where the agency certified that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 of this title if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, or an abuse of discretion.

''(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

''(6) The court may stay the rule or grant such other relief as the court determines to be appropriate if, by the end of the 90-day period (or such longer period as the court may provide) beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

''(A) to prepare an analysis required by section 604; or

''(B) to take corrective action consistent with section 604.

''(7) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

''(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5) shall constitute part of the whole record of agency action in connection with such review.

''(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.''.

AMENDMENT NO. 1657

On page 96, line 24, strike out ''on the date of enactment'' and insert in lieu thereof '''180 days after the date of enactment of this Act, but shall not apply to any agency rule for which a general notice of proposed rulemaking is published on or before such date''.

AMENDMENT NO. 1658

On page 75, strike out lines 13 through 21.

On page 75, line 22, strike out ''708'' and insert in lieu thereof ''707''.

GLENN AMENDMENT NO. 1659

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On Page 59 strike out lines 4 through 6.

GLENN (AND LEVIN) AMENDMENT NO. 1660

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 35, strike out all from line 10 through page 38, line 5, and insert in lieu thereof the following:

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law, and in the event of conflict, the statute under which the rule is promulgated shall govern.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3)(A) the rule adopts the most cost-effective of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits; and

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

''(2)(A) the rule adopts the most cost-effective of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits.''

GLENN AMENDMENT NO. 1661

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 23, strike lines 20 through 23.

LEVIN AMENDMENT NO. 1662

(Ordered to lie on the table.)

Mr. LEVIN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 39, strike lines 18 through line 7 on page 40.

DORGAN AMENDMENT NO. 1663

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 17, beginning on line 8, strike out ''mergers, acquisitions,''.

BIDEN AMENDMENTS NOS. 1664–1665

(Ordered to lie on the table.)

Mr. BIDEN submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1664

On page 75, lines 24 through 26 delete ''it shall be an affirmative defense in any enforcement action brought by an agency that'' and insert ''no civil or criminal penalty shall be imposed if''.

AMENDMENT NO. 1665

Delete from page 35 line 23 to page 37 line 18 and insert in lieu thereof the following:

''§ 624. Decisional criteria

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3)(A) the rule adopts a cost-effective choice among the reasonable alternatives that achieve the objectives of the statute; or

''(4) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

''(2)(A) the rule adopts a cost-effective choice among the reasonable alternatives that achieve the objectives of the statute; or

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GLENN AMENDMENT NO. 1666

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Delete from page 38, line 15 to page 39, line 17 and insert the following:

''(a) Compliance or noncompliance by a agency with the provisions of this subchapter and subchapter III shall not be subject to judicial review except in connection with review of a final agency rule and according to the provisions of this section.

''(b) Any determination by a designee of the President or the Director that a rule is, or is not, a major rule shall not be subject to judicial review in any manner.

''(c) The determination by an agency that a rule is, or is not, a major rule shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination.

''(d) If the cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration. If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

''(e) Any cost-benefit analysis or risk assessment prepared under this chapter shall not be subject to judicial consideration separate or apart from review of the agency action to which it relates. When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.''

BOXER AMENDMENTS NOS. 1667–1678

(Ordered to lie on the table.)

Mrs. BOXER submitted 12 amendment intended to be proposed by her to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1667

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE COMMUNITY RIGHT TO KNOW ACT.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken or delay in any way, the requirements or criteria under the Community Right to Know Act.

AMENDMENT NO. 1668

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE CLEAN AIR ACT.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken or delay in any way, the requirements or criteria under the Clean Air Act.

AMENDMENT NO. 1669

In section 621(9)(B), strike clause (xii) and renumber accordingly.

AMENDMENT NO. 1670

In section 621(9)(B), strike clause (xi) and renumber accordingly.

AMENDMENT NO. 1671

In section 621(9)(B), strike clause (x) and renumber accordingly.

AMENDMENT NO. 1672

In section 621(9)(B), strike clause (vi) and renumber accordingly.

AMENDMENT NO. 1673

In section 621(9)(B), strike clause (iii) and renumber accordingly.

AMENDMENT NO. 1674

In section 621(9)(B), strike clause (ii) and renumber accordingly.

AMENDMENT NO. 1675

On page 25, between lines 22 and 23, insert the following:

''(g) EXEMPTION FOR RULE OR AGENCY ACTION RELATING TO THE SAFETY OF BLOOD SUPPLY.—None of the provisions of this subchapter or subchapter III shall apply to any rule or agency action intended to ensure the safety, efficacy, or availability of blood, blood products, or blood-derived products.

AMENDMENT NO. 1676

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE SAFE DRINKING WATER ACT.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken, or delay in any way, the requirements or criteria under title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.) (commonly known as the ''Safe Drinking Water Act'').

AMENDMENT NO. 1677

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE COASTAL ZONE MANAGEMENT ACT OF 1972 AND THE OIL POLLUTION ACT OF 1990.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken, or delay in any way, the requirements or criteria under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) and the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

AMENDMENT NO. 1678

At the end of section 621, add the following:

''(xiv) a rule or other action taken in connection with the safety of aviation.''

CRAIG (AND HELFIN) AMENDMENT NO. 1679

(Ordered to lie on the table.)

Mr. CRAIG (for himself and Mr. HEFLIN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, between lines 20 and 21, insert the following:

SEC. . REGULATORY AGREEMENTS.

(a) IN GENERAL.—Subchapter II of chapter 5 of title 5, United States Code, is amended by adding at the end of the following:

"§ 557a. Regulatory agreements

''(a) DEFINITION.—In this section, the term 'regulatory agreement' means an agreement entered into under this section.

''(b) GENERAL AUTHORITY.—An agency that is authorized or directed by law to issue a rule (with or without a hearing on the record) that would govern an activity of any person, may, prior to commencing a proceeding to issue such a rule or an amendment to such a rule under the rulemaking procedure that would otherwise apply under that law or this subchapter—

''(1) enter into a regulatory agreement with a person or group of persons engaged in those activities; or

''(2) enter into separate regulatory agreements with different persons or groups of persons engaged in the activity if the agency determines that separate agreements are appropriate in view of different circumstances that apply to different persons or groups of persons.

''(c) REQUEST FOR NEGOTIATIONS.—Negotiations for a regulatory agreement may be commenced—

''(1) at the instance of a person or group of persons engaged in the activity to be regulated by the submission to the agency by such a person or group of persons of a request for negotiations, which may be accompanied by a proposed form of regulatory agreement or by a general description of the proposed terms of a regulatory agreement; or

''(2) at the instance of the agency by publication in the Federal Register of a request to persons engaged in the activity to participate in negotiations, which may be accompanied by a proposed form of regulatory agreement or by a general description of the proposed terms of a regulatory agreement and which shall specify a closing date by which such persons shall notify the agency of their willingness to participate in negotiations.

''(d) DETERMINATION WHETHER TO PROCEED WITH NEGOTIATIONS.—

''(1) IN GENERAL.—Not later that 60 days after receiving a request for negotiations under subsection (c)(1) or after the closing date specified in a request for negotiations under subsection (c)(2), an agency shall publish in the Federal Register a determination whether to conduct negotiations for a regulatory agreement, accompanied by a statement of reasons for the determination.

''(2) CRITERIA.—An agency may determine not to conduct negotiations for a regulatory agreement under this section—

''(A) if the agency finds that the number of persons that have expressed willingness to participate in negotiations, as a proportion of the number of persons whose activity would be governed by the rule, is not sufficient to justify negotiation of a regulatory agreement in addition to issuance of a rule that would govern other persons engaged in the activity; or

''(B) for any other reason, within the sole discretion of the agency.

''(3) NO JUDICIAL REVIEW.—A determination under paragraph (1) shall not be subject to judicial review by any court.

''(d) TERMS AND CONDITIONS.—A regulatory agreement shall contain terms and conditions that—

''(1) in the judgment of the agency, accomplish a degree of control, protection, and regulation of the activity to be regulated that is equivalent to the degree that would be accomplished under a rule issued under the rulemaking procedure that would otherwise apply;

''(2) provide for the addition as parties to the regulatory agreement, with or without a reopening of negotiations, of persons that did not participate in the negotiations;

''(3) provide for renegotiation of the regulatory agreement, at a stated date or from time to time, as renegotiation may become appropriate in view of changed circumstances or for any other reason; and

''(4) specify the provisions of law for the purposes of which the regulatory agreement shall, or shall not, be treated as a rule issued under section 553 or sections 556 and 557, as the case may be.

''(e) ENFORCEMENT.—A regulatory agreement shall provide for injunctive relief and penalties for noncompliance that—

''(1) shall, in the judgment of the agency, adequately deter parties from noncompliance; and

''(2) may be greater or lesser in severity than relief or penalties authorized under the law under authority of which a rule would have been issued.

''(f) CONSIDERATION OF COMMENT BY THE GENERAL PUBLIC.—

''(1) NOTICE.—Before executing a regulatory agreement, an agency shall publish a notice of the terms of the agreement in the Federal Register and solicit comments on the regulatory agreement for a period of not less than 60 days.

''(2) DECISION.—Not later than 60 days after the close of the comment period, an agency shall publish in the Federal Register a decision that includes—

''(1) a response to all comments received; and

''(2) an explanation of the agency's decision to—

''(A) enter into the regulatory agreement as agreed on in negotiations or as modified in response to public comment; or

''(B) decline to enter into the regulatory agreement.

''(h) RULEMAKING.—After publication of a decision under subsection (f)(2), an agency shall commence a rulemaking proceeding to govern the activity of—

''(1) all persons engaged in the activity in question, if the agency declined to enter into a regulatory agreement; or

''(2) if the agency entered into regulatory agreement with fewer than all of the persons engaged in the activity in question, all persons engaged in the activity that are not party to the regulatory agreement.

''(i) JURISDICTION.—The United States district courts shall have jurisdiction to enforce a regulatory agreement in accordance with the terms of the regulatory agreement.''.

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 5 of title 5, United States Code, is amended by inserting after the item for section 557 the following:

''Sec. 557a. Regulatory agreements.''.

JOHNSTON AMENDMENTS NOS. 1680–1693

(Ordered to lie on the table.)

Mr. JOHNSTON submitted 14 amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1680

On page 28 after line 23 insert ''and may place such rule on the final schedule for the completion of review within the first 3 years of the schedule if the rule was included on the schedule under subsection (b)(1).

AMENDMENT NO. 1681

On page 28 at the end of line 14 after the word ''rule'' insert ''that had not been included on the schedule under subsection (b)(1) by the head of the agency''.

AMENDMENT NO. 1682

On page 79, strike lines 22 and 23 and insert: ''final rule, if a joint resolution of disapproval is enacted under section 802.''

AMENDMENT NO. 1683

On page 31, line 23 strike out ''shall'' and insert ''may''.

AMENDMENT NO. 1684

On page 37, line 24 through page 38, line 5, strike out subparagraph (B) and insert in lieu thereof the following new subparagraph:

''(B) if scientific, technical, or economic uncertainties preclude making the finding under subparagraph (A), or if a more cost-effective approach to risk reduction is possible, or if net benefits to health, safety, or the environment make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, promulgating the rule is nevertheless justified for such reasons, stated in writing in such finding.''

AMENDMENT NO. 1685

On page 36, line 15 through 21, strike out subparagraph (B) and insert in lieu thereof the following new subparagraph:

''(B) if scientific, technical, or economic uncertainties preclude making the finding under subparagraph (A), or if a more cost-effective approach to risk reduction is possible, or if net benefits to health, safety, or the environment make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, promulgating the rule is nevertheless justified for such reasons, stated in writing in such finding.''

AMENDMENT NO. 1686

On page 36, line 16 strike out the word ''nonquantifiable''.

AMENDMENT NO. 1687

On page 36, line 2 strike out the word ''nonquantifiable''.

AMENDMENT NO. 1688

On page 37, line 10 strike out the word ''nonquantifiable''.

AMENDMENT NO. 1689

On page 37, line 25 strike out the word ''nonquantifiable''.

AMENDMENT NO. 1690

On page 96, starting at line 21, strike section 9 and insert in lieu thereof the following new section:

"SEC. 9. EFFECTIVE DATES AND SEVERABILITY.

''(a) Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

''(b) Section 3 of this Act shall take effect on the date that is 90 days after the date of enactment.

''(c)(1) Except as provided in paragraph (2), section 4 of this Act shall take effect on the date that is 60 days after the date of enactment.

''(2) For final major rule that is promulgated after the effective date of section 4 but not later than 2 years after the date of enactment of this Act, in lieu of preparing a cost-benefit analysis under section 622 or a risk assessment under section 633, an agency may use other appropriately developed analyses that allow it to make the findings required by section 624.

''(d) If any provision of this Act, an amendment made by this Act, or the application of

such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.''

AMENDMENT NO. 1691

On page 73, between lines 5 and 6, insert the following new paragraph:

''(3) Conformance of Administrative Procedure Requirements in the Department of Energy Organization Act with Section 553 of Title 5, As amended.—

''(A) Subsections (b) through (e) of section 501 of the Department of Energy Organization Act (42 U.S.C. 7191 (b) through (e)) are hereby repealed.

''(B) Subsections (f) and (g) of section 501 of the Department of Energy Organization Act (42 U.S.C. 7191 (f) and (g)) are hereby redesignated as subsections (b) and (c).''

AMENDMENT NO. 1692

On page 41, line 22, before the comma insert the following: ''and the Nuclear Regulatory Commission''.

AMENDMENT NO. 1693

On page 22, between lines 17 and 18, insert the following new subparagraph and redesignate the following subparagraph accordingly:

''(D) a succinct comparison of the estimated costs of the proposed major rule and the annual expenditure of national economic resources reported for the regulatory program issuing the major rule, as reported in the most recent report issued pursuant to section 7(b)(4)(B)(i) of the Comprehensive Regulatory Reform Act of 1995.''

SIMON AMENDMENTS NOS. 1694–1695

(Ordered to lie on the table.)

Mr. SIMON submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1694

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) SENSE OF THE SENATE REGARDING REFORM OF THE DELANEY CLAUSE.—It is the sense of the Senate that—

(1) the Delaney Clause in the Federal Food, Drug, and Cosmetic Act governing carcinogens in foods must be reformed;

(2) any such reform of the Delaney Clause—

(A) should reflect the case and deliberativeness due to a subject as important as whether and to what extent infants and children shall be exposed to carcinogens through the food they consume; and

(B) should not undermine other safety standards.

(3) advances in science and technology since the Delaney Clause was originally enacted in 1958 have prompted the need to refine the standards in current law with respect to pesticide residues, and may have limited the appropriateness of such standards with respect to food additives and animal drugs;

(4) the Delaney Clause should be replaced by a contemporary health-based standard that takes into account—

(A) the right of the American people to safe food;

(B) the conclusions of the National Academy of Sciences concerning the special susceptibility of infants and children to the effects of pesticide chemicals and the cumulative effect of the residues of such pesticide chemicals on human health;

(C) the importance of a stable food supply and a sound agricultural economy; and

(D) the interests of consumers, farmers, food manufacturers, and other interested parties; and

(5) prior to the end of the first session of the 104th Congress, after appropriate consideration by the committees of jurisdiction, the Senate should enact legislation to reform the Delaney Clause.

AMENDMENT NO. 1695

On page 71, strike out lines 13 through 23.

NUNN (AND COVERDELL) AMENDMENTS NOS. 1696–1700

(Ordered to lie on the table.)

Mr. NUNN (for himself and Mr. COVERDELL) submitted five amendments intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1696

On page 68, strike line 23 and all that follows through page 71, line 13, and insert the following:

''(B) prepared an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604; or

''(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition, except that the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review such certification, analysis, or failure to prepare such analysis in connection with a general notice of proposed rulemaking.

''(2)(A) Notwithstanding any other provision of law, an affected small entity shall, beginning on the date of publication of the final rule, have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such final rule.

''(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year after the date the analysis is made available to the public.

''(C) Notwithstanding any other provision of law, an affected small entity shall file a petition for review of a certification, analysis, or failure to prepare an analysis required by this subchapter in connection with a general notice of proposed rulemaking not later than 90 days after the publication of such general notice of proposed rulemaking.

''(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be subject to the provisions of, or otherwise required to comply with, the final rule.

''(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law, or to grant any other relief in addition to the requirements of this section.

''(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record as a whole, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare an initial regulatory flexibility analysis that satisfies the requirements of section 603, or a final regulatory flexibility analysis that satisfies the requirements of section 604.

''(B)(i) If the court determines, on the basis of the court's review of the whole rulemaking record, that an initial regulatory flexibility analysis prepared by an agency does not satisfy the requirements of section 603, the court shall order the agency to prepare an initial regulatory flexibility analysis that satisfies the requirements of such section.

''(ii) If the court determines, on the basis of the court's review of the rulemaking record, that a final regulatory flexibility analysis prepared by an agency does not satisfy the requirements of section 604, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of such section.

''(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

''(A) to prepare the analysis required by section 603 or 604; or

''(B) to take corrective action consistent with section 604.

''(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

''(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.''.

(c) CERTIFICATIONS.—Section 605(b) of title 5, United States Code, is amended to read as follows:

''(b) Sections 603 and 604 shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of the general notice of proposed rulemaking for the rule or at the time of publication of the final rule, as appropriate, and a succinct statement providing the factual basis for such certification, and shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.''.

AMENDMENT NO. 1697

On page 39, amend section (e)(1), as notified by amendment No. 1491, to read as follows:

''(e) INTERLOCUTORY REVIEW.—(1) The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction in review—

''(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

''(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

AMENDMENT NO. 1698

On page 14, amend subparagraph (C), as added by the amendment No. 1491, to read as follows:

''(C) solely for purposes of subchapter II, any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

AMENDMENT NO. 1699

On page 39, amend section (e)(1), as modified by the amendment No. 1491, is deemed to be as follows:

(e) INTERLOCUTORY REVIEW.—(1) the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review—

''(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

''(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

AMENDMENT NO. 1700

On page 14, amend subparagraph (C), as added by the amendment No. 1491, is deemed to be as follows:

''(C) solely for purposes of subchapter II, any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

JOHNSTON AMENDMENT NO. 1701

(Ordered to lie on the table.)

Mr. JOHNSTON submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the end of subchapter III add the following new section:

''§ 637. Research and training in risk assessment

''(a) The head of each covered agency in section 635 shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

''(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

''(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

''(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmamalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

''(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

''(b) The head of each covered agency in section 635 shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

LEVIN AMENDMENTS NOS. 1702–1707

(Ordered to lie on the table.)

Mr. LEVIN submitted six amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, as follows:

AMENDMENT NO. 1702

On page 78, line 17, strike ''60'' and insert ''45''.

On page 80, line 23, strike ''60'' and insert ''45''.

AMENDMENT NO. 1703

On page 40, line 8, strike everything through page 41, line 12, and insert the following:

SECTION 626. DEADLINES FOR RULEMAKING.

''(a) All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(b) All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(c) In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

AMENDMENT NO. 1704

On page 22, line 19, after ''scientific evaluations,'' insert ''cost estimates,''

On page 22, line 24, after ''scientific evaluation,'' insert ''cost estimate,''.

AMENDMENT NO. 1705

On page 3, line 2, strike ''or''.

On page 3, line 7, strike the period and insert the following: ''; or

''(5) a rule relating to government loans, grants or benefits.''

AMENDMENT NO. 1706

On page 23, line 11, insert between ''and of'' and ''the'' the following: ''a reasonable number of''.

AMENDMENT NO. 1707

On page 21, line 25, insert between ''of'' and ''reasonable'' the following: ''a reasonable number of''.

BIDEN AMENDMENTS 1708–1710

(Ordered to lie on the table.)

Mr. BIDEN submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1708

On page 19, line 7, strike the period and insert the following: ''; or (xiii) a rule intended to protect the blood supply of the United States from communicable diseases or other threats to public health.''

AMENDMENT NO. 1709

On page 49, line 12, after ''into,'' insert: ''or removal from''.

AMENDMENT NO. 1710

On page 16, line 16, after ''into,'' insert: ''or removal from''.

DASCHLE AMENDMENTS NOS. 1711–1712

(Ordered to lie on the table.)

Mr. DASCHLE submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1711

On page 50, add after line 2 the following new paragraph:

''(F) a rule or agency action intended to enhance fish and seafood safety through the use of Hazard Analysis Critical Control Point principles, including the rulemaking proposed by the Food and Drug Administration (Department of Health and Human Services) in the Federal Register on January 28, 1994.''

AMENDMENT NO. 1712

On page 25, add after line 22 the following new provision:

''(3) None of the provisions of this subchapter shall apply to any rule or agency action intended to enhance fish and seafood safety through the use of Hazard Analysis Critical Control Point principles, including the rulemaking proposed by the Food and Drug Administration (Department of Health and Human Services) in the Federal Register on January 28, 1994.''

ASHCROFT AMENDMENT NO. 1713

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the end, add the following new title:

''TITLE II—URBAN REGULATORY RELIEF ZONES

SECTION 201. SHORT TITLE.

This Act may be cited as the ''Urban Regulatory Relief Zone Act of 1995''.

SEC. 202. FINDINGS.

The Congress finds that—

(1) the likelihood that a proposed business site will comply with regulations is inversely related to the length of time over which a site has been utilized for commercial and/or industrial purposes, thus rendering older sites in urban areas most unlikely to be chosen for new development and thereby forcing new development away from the most needy areas; and

(2) broad Federal regulations often have unintended social and economic consequences in urban areas where such regulations, among other things—

(A) offend basic notions of common sense, particularly when applied to individual sites;

(B) adversely impact economic stability;

(C) result in the unnecessary loss of existing jobs and businesses;

(D) undermine new economic development, especially in previously used sites;

(E) create undue economic hardships while failing significantly to protect human

health, particularly in areas where economic development is urgently needed in order to improve the health and welfare of residents over the long term; and

(F) contribute to social deterioration to such a degree that high unemployment, crime, and other economic and social problems create the greatest risk to the health and well-being of urban residents.

SEC. 203. PURPOSES.

The purposes of this tile are to—

(1) empower qualifying cities to obtain selective relief from Federal regulations that undermine economic stability and development in distressed areas within the city; and

(2) authorize Federal agencies to waive the application of specific Federal regulations in distressed urban areas—

(A) upon application through the Office of Management and Budget by an Economic Development Commission established by a qualifying city pursuant to section 205; and

(B) upon a determination by the appropriate Federal agency that granting such a waiver will not substantially endanger health or safety.

SEC. 204. ELIGIBILITY FOR WAIVERS

(a) ELIGIBLE CITIES.—The mayor or chief executive officer of a city may establish an Economic Development Commission to carry out the purposes of section 205 if—

(1) the city has a population greater than 200,000 according to the U.S. Census Bureau's latest estimates for city populations.

(b) DISTRESSED AREAS.—Any census tract within a city shall qualify as a distressed area if—

(1) 33 percent or more of the resident population in the census tract is below the poverty line; or

(2) 45 percent or more of out-of-school males aged 16 and over in the census tract worked less than 26 weeks in the preceding year; or

(3) 36 percent or more families with children under age 18 in the census tract have an unmarried female as head of the household; or

(4) 17 percent or more of the resident families in the census tract received public assistance income in the preceding year.

SEC. 205. ECONOMIC DEVELOPMENT COMMISSIONS.

(a) PURPOSE.—The mayor or chief executive officer of a qualifying city under section 204 may appoint an Economic Development Commission for the purpose of—

(1) designating distressed areas, or a combination of distressed areas with one another or with adjacent industrial or commercial areas, within the city as Urban Regulatory Relief Zones; and

(2) making application through the Office of Management and Budget to waive the application of specific Federal regulations within such Urban Regulatory Relief Zones.

(b) COMPOSITION.—to the greatest extent practicable, an Economic Development Commission shall include—

(1) residents representing a demographic cross section of the city population; and

(2) members of the business community, private civic organizations, employers, employees, elected officials, and State and local regulatory authorities.

(c) LIMITATION.—No more than one Economic Development Commission shall be established or designated within a qualifying city.

SEC. 206. LOCAL PARTICIPATION

(a) PUBLIC HEARINGS.—Before designating an area as an Urban Regulatory Relief Zone, an Economic Development Commission established pursuant to section 205 shall hold a public hearing, after giving adequate public notice, for the purpose of soliciting the opinions and suggestions of those persons who will be affected by such designation.

(b) INDIVIDUAL REQUESTS.—The Economic Development Commission shall establish a process by which individuals may submit requests to the Economic Development Commission to include specific Federal regulations in the Commission's application to the Office of Management and Budget seeking waivers of Federal regulations.

(c) AVAILABILITY OF COMMISSION DECISIONS.—After holding a hearing under paragraph (a) and before submitting any waiver applications to the Office of Management and Budget pursuant to section 207, the Economic Development Commission shall make publicly available—

(1) a list of all areas within the city to be designated as Urban Regulatory Relief Zones, if any;

(2) a list of all regulations for which the Economic Development Commission will request a waiver from a Federal agency; and

(3) an explanation of the reasons that the waiver of a regulation would economically benefit the city and the data supporting such a determination.

SEC. 207. WAIVER OF FEDERAL REGULATIONS.

(a) SELECTION OF REGULATIONS.—An Economic Development Commission may select for waiver, within an Urban Regulatory Relief Zone, Federal regulations that—

(1)(A) are unduly burdensome to business concerns located within an area designated as an Urban Regulatory Relief Zone; or

(B) discourages new economic development within the zone: or

(C) creates undue economic hardships in the zone; or

(D) contributes to the social deterioration of the zone; and

(2) if waived, will not substantially endanger health or safety.

(b) REQUEST FOR WAIVER.—(1) An Economic Development Commission shall submit a request for the waiver of Federal regulations to the Office of Management and Budget.

(2) Such request shall—

(A) identify the area designated as an Urban Regulatory Relief Zone by the Economic Development Commission;

(B) identify all regulations for which the Economic Development Commission seeks a waiver; and

(C) explain the reasons that waiver of the regulations would economically benefit the Urban Regulatory Relief Zone and the data supporting such determination.

(c) REVIEW OF WAIVER REQUEST.—No later than 60 days after receiving the request for waiver, the Office of Management and Budget shall—

(1) review the request for waiver;

(2) determine whether the request for waiver is complete and in compliance with this title, using the most recent census data available at the time each application is submitted; and

(3) after making a determination under paragraph (2)—

(A) submit the request for waiver to the Federal agency that promulgated the regulation and notify the requesting Economic Development Commission of the date on which the request was submitted to such agency; or

(B) notify the requesting Economic Development Commission that the request is not in compliance with this Act with an explanation of the basis for such determination.

(d) MODIFICATION OF WAIVER REQUESTS.—An Economic Development Commission may submit modifications to a waiver request. The provisions of subsection (c) shall apply to a modified waiver as of the date such modification is received by the Office of Management and Budget.

(e) WAIVER DETERMINATION.—No later than 60 days after receiving a request for waiver under subsection (c) from the Office of Management and Budget, a Federal agency shall—

(A) make a determination of whether to waive a regulation in whole or in part; and

(B) provide written notice to the requesting Economic Development Commission of such determination.

(2) Subject to subsection (g), a Federal agency shall deny a request for a waiver only if the waiver substantially endangers health or safety.

(3) If a Federal agency grants a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) describes the extent of the wavier in whole or in part; and

(B) explains the application of the waiver, including guidance for the use of the waiver by business concerns, within the Urban Regulatory Relief Zone.

(4) If a Federal agency denies a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) explains the reasons that the waiver substantially endangers health or safety; and

(B) provides a scientific basis in writing for such determination.

(f) AUTOMATIC WAIVER.—If a Federal agency does not provide the written notice required under subsection (e) within the 120-day period as required under such subsection, the waiver shall be deemed to be granted by the Federal agency.

(g) LIMITATION.—No provision of this Act shall be construed to authorize any Federal agency to waive any regulation or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, gender, or national origin.

(h) APPLICABLE PROCEDURES.—A waiver of a regulation under subsection (e) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5, United States Code. The Federal agency shall publish a notice in the Federal Register stating any waiver of a regulation under this section.

(i) EFFECT OF SUBSEQUENT AMENDMENT OF REGULATIONS.—If a Federal agency amends a regulation for which a waiver under this section is in effect, the agency shall not change the waiver to impose additional requirements.

(j) EXPIRATION OF WAIVERS.—No waiver of a regulation under this section shall expire unless the Federal agency determines that a continuation of the waiver substantially endangers health or safety.

SEC. 208. DEFINITIONS.

For purposes of this Act, the term—

(1) ''regulation'' means—

(A) any rule as defined under section 551(4) of title 5, United States Code; or

(B) any rulemaking conducted on the record after opportunity for an agency hearing under sections 556 and 557 of such title;

(2) ''Urban Regulatory Relief Zone'' means an area designated under section 205;

(3) ''qualifying city'' means a city which is eligible to establish an Economic Development Commission under section 204;

(4) ''industrial or commercial area'' means any part of a census tract zoned for industrial or commercial use which is adjacent to a census tract which is a distressed area pursuant to section 205(b); and

(5) ''poverty line'' has the same meaning as such term is defined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).''.

MOYNIHAN AMENDMENTS NOS. 1714–1718

(Ordered to lie on the table.)

Mr. MOYNIHAN submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1714

On page 2, strike lines 15 through 25; on page 3, strike lines 1 through 7 and insert in lieu thereof, the following:

''(a) APPLICABILITY.—This section applies to every rulemaking according to the provisions thereof, except to the extent that there is involved—

''(1) a matter pertaining to an auxiliary or foreign affairs function of the United States;

''(2) a matter relating to the management or personnel practices of an agency;

''(3) an interpretative rule, general statement of policy, guidance, or rule of an agency, organization, procedure, or practice unless such rule, statement, or guidance has general applicability and substantially alters or * * * rights or obligations of persons outside the agency;'' strike ''or;

''(4) a rule relating to the acquisition, arrangements, or disposal by an agency of real or personal property, or of services; these are promulgated in compliance with otherwise applicable criteria and procedures; or

''(5) an interpretative rule involving the internal revenue laws of the United States other than an interpretative regulation.''

AMENDMENT NO. 1715

On page 12, line 9: after ''petition'', insert ''(other than a petition relating to a rule described in section 621(9)(B)(i))''.

AMENDMENT NO. 1716

On page 68, line 18: insert ''(other than a rule described in section 621(9)(B)(i))'' after ''rule''.

AMENDMENT NO. 1717

On page 9, line 5: insert ''Nothing in this section shall be interpreted to limit the application of 26 U.S.C. 7805.''

AMENDMENT NO. 1718

On page 13, line 4: insert ''(or as otherwise provided)'' after ''subchapter''.

On page 16, line 8: insert ''for purposes of this chapter'' after ''(i)''.

PACKWOOD AMENDMENTS NOS. 1719–1723

(Ordered to lie on the table.)

Mr. PACKWOOD submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMEMDMENT NO. 1719

[Amendment No. 1719 was not reproducible for the RECORD. It will appear in a subsequent issue.]

AMENDMENT NO. 1720

On page 13, line 4: insert ''(or as otherwise provided)'' after ''subchapter''.

On page 16, line 8 insert ''for purposes of this chapter'' after ''(i)''.

AMENDMENT NO. 1721

On page 9, line 5, insert ''Nothing in this section shall be interpreted to limit the application of 26 U.S.C. 7805.''

AMENDMENT NO. 1722

On page 68, line 18, insert ''(other than a rule described in section 621(9)(B)(i))'' after ''rule.''

AMENDMENT NO. 1723

On page 12, line 9: after ''petition'', insert: ''(other than a petition relating to a rule described in section 621(9)(B)(i))''.

GLENN (AND LEVIN) AMENDMENTS NO. 1724–1725

(Ordered to lie on the table.)

Mr. GLENN (for himself and Mr. LEVIN) submitted two amendments intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1724

On page 57, at the end of paragraph (1), insert:

''The requirements of this subsection shall not apply to a specific rulemaking where the head of an agency has published a determination, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, and notified the congress, that the agency is unable to comply fully with the peer review requirements of this subsection and that the rulemaking process followed by that agency provides sufficient opportunity for scientific or technical review of risk assessments required by this subchapter.''

AMENDMENT NO. 1725

On page 21, line 25, insert between ''of'' and ''reasonable'' the following: ''a reasonable number of''.

On page 23, line 11, insert between ''and of'' and ''the'' the following: ''a reasonable number of''.

NOTICE OF HEARING CANCELLATION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the hearing on S. 871, the Hanford Land Management Act, previously scheduled before the full Committee on Energy and Natural Resources for Thursday, July 20 at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC, has been canceled. For further information, please call Maureen Koetz at 202–224–0765 or David Garman at 202–224–7933.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. NICKLES. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Friday, July 14, 1995, to conduct a hearing on Mexico and the exchange stabilization fund.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

B–2 BOMBERS

● Mr. NUNN. Mr. President, I am disappointed that the Senate Armed Services Committee did not include funding for additional B–2 bombers in the National Defense authorization bill that was filed yesterday. In my view, this was a short-sighted decision, one which I hope can be reversed. Today, Mr. President, I want to enter into the RECORD two recent editorials and a letter, all of which, I believe, help Members to understand the importance of continuing the B–2 program.

The first editorial comment was authorized by Paul Wolfowitz, and appeared in the June 12 edition of the Wall Street Journal. Mr. Wolfowitz points out that the DOD–IDA bomber study had assumed enough warning time for over 500 U.S. tactical aircraft and many other assets to arrive before the war started. He notes, and I quote, ''Not surprisingly, the contribution of additional B–2's would not be cost-effective in those hypothetical circumstances.'' Mr. Wolfowitz goes on posit the importance of the B–2 bomber in less favorable scenarios and circumstances, noting its independence from foreign bases; its value in possible East Asian scenarios, where neither land-based nor carrier air have the needed range; and its ability both to deter and to retaliate while placing few Americans in harm's way. After noting the advantages of stealth, Mr. Wolfowitz goes on to note, and I quote:

With more than 30 wings of traditional fighter aircraft and only one wing of B–2's and two wings of F–117's it could hardly be said that the U.S. is overemphasizing stealthy attack capability.

The second editorial comment is by Charles Krauthammer, and is in today's Washington Post. Mr. Krauthammer notes that, and I quote:

There are three simple, glaringly obvious facts about this new era: (1) America is coming home; (2) America cannot endure casualties; (3) America's next war will be a surprise. * * *

He goes on to note that the B–2 is not a partisan project, that today it is supported by,

Seven Secretaries of Defense representing every administration going back to 1969. They support it because it is the perfect weapon for the post-cold war world.

Mr. Krauthammer goes on to note that the so-called Republican cheap hawks, concerned about high costs, hold the future of the program in their hands. He notes, and I quote,

But the dollar cost of a weapon is too narrow a calculation of its utility. The more important calculation is cost in American lives. The reasons are not sentimental, but practical. Weapons cheap in dollars but costly in lives are, in the current and coming environment, useless. A country that so values the life of every Captain O'Grady is a country that cannot keep blindly relying on nonstealthy aircraft over enemy territory.

My third submission, Mr. President, is a letter to me from recently retired Air Force Gen. Chuck Horner, who was the overall air commander during Operation Desert Storm. He begins by noting that his career was spent in operations and that in his entire career, he had never advocated buying any specific weapons system. Having said that,